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THE FIGHT FOR DIVORCE

by

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PREFACE

THERE are circles in which it is taken for granted that all the people who want divorce made easier are irreligious people with low moral standards, and that all the people who want it made more difficult are religious people with high moral standards.

That distinction is quite a false one.

The divorce law reformers are people who, having tried to see things as they really are, propose measures which they believe would make them better. The divorce law reactionaries are people who, starting with preconceived notions of things as they ought to be, flatter themselves that the best, if not the only, way of bringing things as they are into line with things as they ought to be is to keep on telling us that they would be as they ought to be if only we all determined to make them so.

Reformers and reactionaries uphold the same ideal of marriage. The perfect marriage, for both of them, is one in which physical union, equally desired by husband and wife, and supplemented by mental, moral and spiritual harmony, is undisturbed, not only by infidelity, but by the taint of any desire for it. They are agreed, too, that in actual marriage this admirable ideal is not always realized: that some husbands have grave grounds of complaint against their wives; that some wives have grave grounds of complaint against their husbands; that mistakes are sometimes made;

that there are husbands and wives who, even when they have no very grave grounds of complaint against each other, find married life a prison rather than a Paradise; and that the temptation to infidelity, in such cases, is always strong and is not very often resisted.

But then comes the question: What ought to be done about it? And that is where the reactionaries and the reformers differ.

Incompatibility, say the reformers, is not wickedness, and ought not to be treated or denounced as wickedness. It is merely the painful symptom of a regretted and regrettable mistake. In marriage, as in all other enterprises, we ought, when possible, to be allowed to correct our mistakes. There may be cases in which the attempt to correct them would inflict injustice, or would make bad worse; but whenever they can be corrected without any such consequences, it is much better that they should be corrected, and the only means of correcting them is divorce.

The reactionaries will not admit this.

Some of them take the view—we shall see Canon Hensley Henson taking it in his evidence before the Royal Commission on Divorce and Matrimonial Causes—that incompatibility results from some defect of the character, and that husbands and wives can always love each other if they try prayerfully and conscientiously to do so. Others admit incompatibility as a real obstruction to happiness in marriage, but regard the incompatibles as martyrs whose duty it is to bear their cross, cheered only, if at all, by the devout saying: No cross, no crown.

Reconciliation between those who hold these extreme views is impossible. The conflict between

them is as old as the Christian era. It is a conflict between those who contend that there can be no remedy for matrimonial misfortunes except divorce and those who reply that, in that case, there can be no remedy for it at all because divorce is a sin, expressly forbidden by Christ and His Church.

This book is an attempt to present the story of the conflict in a popular form. It will trace the history of the doctrine that marriage is a sacrament and, therefore, indissoluble. It will show how the Church which first declared that doctrine played, and still plays, fast and loose with it. It will examine the claims of Churches which have separated from that Church to speak with collective ecclesiastical authority and the claims of Bishops and other Churchmen to represent that their own views are, and must be accepted as, the authorized teaching of the particular religious bodies in which they minister. It will finally summarize the arguments in favour of divorce which the reformers base, not like the reactionaries, upon textual criticism, but upon their observation of human needs.

No previous book on the subject covers quite the same ground. Mr. S. B. Kitchin's excellent *History of Divorce* appeared too soon to deal with the Report of the Royal Commission. Mr. Joseph McCabe's admirable controversial work, *The Influence of the Church on Marriage and Divorce*, though published later, does not deal with it, and devotes only a single chapter to marriage and divorce in England. Mr. E. S. P. Haynes confines himself to the modern aspects of the question.

In these pages, towards the end of the book, a good deal of space has been given, not only to the two Reports—Majority and Minority—which the Royal Commission issued, but also to an analysis

of the voluminous evidence which the Commissioners had to weigh. That evidence is, perhaps, more interesting and more instructive than the Reports themselves. It brings into clear relief many points over which the Reports pass rather lightly—the bearing, for instance, of venereal diseases, which were unknown in the time of Christ, upon the case for facilitating divorce, and upon the regularity with which irregular connections are formed when separations are ordered but divorce is unobtainable. It gives particulars and tells stories illustrative of the terrible hardness of those hard cases which the reformers are so anxious, and the reactionaries so reluctant, to remedy, and so helps any student of the subject to estimate the applicability to this question of the ancient and familiar saying that "hard cases make bad law".

It is a true enough saying when properly understood and applied. It means that a law passed for the relief of hard cases may incidentally create other cases which are even harder. If our clerical reactionaries know of any cases harder than some of those cited in this work which a rational extension of facilities for divorce would entail, they had better tell us what they are.

They have not told us yet.

One gets no light on that branch of the subject either from the Minority Report of the Royal Commission to which Dr. Lang, now Archbishop of Canterbury, appended his signature, or in any of the writings of any of the divines—most of whom seem to favour the view that conditions which, they have been told, almost invariably result in immorality must be tolerated in order to avoid what they denounce as sin, though the law of the State of which they are functionaries permits it.

The Fight for Divorce

CHAPTER I

"Clericalism is the enemy"—Need of a history of the attitude of the Churches towards Divorce in order to gauge the value of Clerical Authority in the matter.

THE long story of the long battle, still raging, for humane and rational marriage laws, can be summed up in one short sentence : Clericalism is the enemy of reform.

It has always been the enemy of reform, and it is the enemy still. Quite recently Dr. Bell, Bishop of Chichester, contributed a war-cry to the fight in the form of a pastoral letter addressed to those about to marry in any church or chapel in his diocese. The essential sentences are these :

"It is clear that the vow taken by each party to the marriage is for life, whatever may happen in the future. Thus it 'is for better for worse', even if one of the parties proves unfaithful to the other, or if it turns out in the course of time that husband and wife are wholly unsuited to each other. . . . 'In sickness and in health' includes the possibility that one of the parties may become incurably ill in body or in mind."

One willingly credits the Bishop with the belief that these sentiments are pious sentiments ; but they are sentiments which he might, with advantage, reconsider. Let us analyse them.

They set an alleged law of the Church above the actual law of the land. They assert the right of clerical authority to over-ride all considerations

of personal happiness and public convenience. They minimize the importance of conjugal fidelity, and even suggest infidelity by insisting that no unpleasant legal consequences ought ever, in any circumstances, to follow from it, and that no injured husband or wife ought to be allowed any adequate remedy for the wrong sustained. They create, or try to create, the impression that husbands and wives who have come to hate each other can serve God by continuing to sleep together even though the result of their doing so is almost certain to be the birth of syphilitic or mentally deficient children. They, finally, lay down—not, indeed, in so many words, but certainly by implication—the principle that, compared with divorce, which is a deadly sin, promiscuous indulgence in the pleasures of immorality is only a venial offence.

That seems to be the teaching of the Church of England as interpreted by the Bishop of Chichester. It is unquestionably the teaching of the Church of Rome, as formulated by the Council of Trent and interpreted by Monsignor Moyes in the evidence which he gave before the Royal Commission on Divorce and Martimonial Causes in 1912. That is why this book, written in the interest of those who desire the rationalization of our marriage laws, starts with a declaration of war against clericalism as the enemy to be fought.

It is a very formidable enemy. It remains formidable in England, in spite of the average Englishman's hostility to clerical pretensions—in spite of the principle laid down in the 37th of our Thirty-nine Articles that "the Bishop of Rome hath no jurisdiction in this realm of England"—because of the peculiar nature of our Parliamentary institutions.

Absolute rulers, when not superstitious or priest-

ridden, have frequently defied priests. Many of them have expelled the Jesuits. Henry VIII put a Pope in what he conceived to be his proper place. The first Napoleon put a Pope under lock and key. But modern statesmen, in England at all events, generally defer to them.

Why ?

Not, so far as one can seen, because they have any particular respect for their intelligence or are in the habit of looking to them for what our bishops, in their official pronouncements, call "guidance". The time when the clergy were more intelligent and better educated than the laity—and, therefore, qualified to guide them—has long since passed. In spite of the outstanding exceptions, the standard of education and intelligence is admittedly lower, nowadays, in the Church than in several other professions. The clerical party, however, still wields considerable political influence ; and practical politicians are consequently afraid of offending them.

They and their followers, it is true, constitute only a small minority of the population ; but that minority is, or is believed to be, numerous enough and stubborn enough to influence the result of a Parliamentary election and confound the plans of Party leaders. That is the principal, if not the only, reason why, though nearly twenty years have elapsed since a Royal Commission reported in favour of a large extension of the grounds on which divorce can be granted, very little has yet been done in the matter —and that little only from fear of the Feminists. Where the fear of the Feminist vote does not force a way, the fear of the clerical vote blocks it. Conservatives, Liberals and Socialists, differing about many things, have long been agreed that the divorce laws, like the waters of Camerina, are better left undisturbed.

This, surely, is an illogical and distressing state of things.

It is illogical because it has always been regarded as of the essence of democratic government that minorities should bow to majorities. It is distressing because—as many bitter cries from many classes of society attest—the provision of proper facilities for the dissolution of unhappy marriages would remove more painful grievances and do more to promote human happiness than any political measure at present on either the Conservative or the Socialist programme.

A clerical minority having achieved that triumph, these questions may reasonably be raised:

Is this question of the divorce laws one which really concerns the clergy? What is the basis of the authority with which they claim to speak when they lay down the law about it in language suggesting a judgment from which there can be no appeal? Cannot something be done by a candid, careful and impartial examination of their case, their pretensions and their record, to discover whether they have ever fully thought out the problems which they obligingly undertake to solve for us?

Sensible laymen and sensible clergymen often agree about many things; but sensible laymen do not, in these days, go to clerical pronouncements for advice on grave moral issues. Observation and experience have taught them that the average clergyman is not much given to thinking in the sense in which the operation of thought is understood by philosophers or men of science. They perceive that the few clergymen who do think in that sense—such men as Dean Inge and Bishop Barnes and Dr. Major—become, as soon as they give expression to their thoughts, the targets of the

violent abuse of a number of other clergymen who are too busy telling other people what to think to have much time left over in which to do any thinking on their own account, but are satisfied to set opinion above truth on the ground that all the thinking necessary has been done for them by what some of them call the Church and others call the Churches.

What, then, is the Church? What, alternatively, are the Churches?

These are other questions which it is obviously necessary for us to answer as accurately as we can when we attempt to decide the question whether, or to what extent, the alleged direction of either the Church or the Churches on any matter should be regarded as authoritative; and they are unfortunately questions to which the adherents of different Churches give different answers.

The definition of the Church of Christ given in the Thirty-nine Articles of the Church of England is: "a congregation of faithful men, in which the pure Word of God is preached, and the Sacraments be duly ministered according to Christ's ordinance in all those things that of necessity are requisite to the same."

No more than that; and no clergyman—even if he be a bishop—has any right, which the State admits, to add anything to that. If any do so, or attempt to read any new meaning into any of the Articles, "he, or they the Offenders",. says His Majesty's Declaration, printed at the head of the Articles, "shall be liable to Our displeasure, and the Church's censure in Our Commission Ecclesiastical, as well as any other: And We will see there shall be due Execution upon them."

Our definition, it will be observed, does not provide, or even suggest, any machinery for deciding in what the "purity" of the Word of God or the

due ministration of the Sacraments consists, or for determining, when disputes or differences of opinion occur, what is, or what is not, the teaching of "the Church".

What follows ?

It obviously follows that, in so far as this question of divorce is concerned, there is no definite "teaching of the Church" which can be set up in opposition to the law of the land. What passes for such—in the Church of England, at all events—is a figment of the imagination. What really confronts us, and has to be dealt with, in the connection is the teaching of a number of individual members of the Church whom we find drawing from identical premises, with an air of equal authority, diametrically contradictory conclusions.

Anyone who wants confirmation of that statement has only to compare the evidence respectively given before the Royal Commission by the late Bishop of Ely and the present Bishop of Durham, then Canon Hensley Henson. According to the former, every marriage is, in the eyes of the Church, absolutely indissoluble and any marriage sanctioned by the State after its dissolution by the State is "adulterous". According to the latter, there are various reasons why marriages may properly be dissolved and there is no reason why both husband and wife should not subsequently contract other marriages.

Here we have two episcopal views which no exercise of ingenuity can reconcile. The two prelates were equally well entitled to tell the Commission what they thought that the law of the Church ought to be. Neither of them had a better right than the other, or, indeed, any right at all, to announce, on behalf of the Church, what the law of the Church actually was.

Similarly with the many Nonconformist witnesses who were called. These also spoke for themselves, not all of them holding the same opinions, and claimed no right to do more than state the views which they personally held, and preached, and believed (often on insufficient evidence) to be held by the majority of their co-religionists. In no case did they come before the Commission representing themselves as the authorized and infallible interpreters of Divine decrees.

The position of the Church of Rome is, as everybody knows, different. It alone among the Churches with which we are concerned in England possesses a complete and coherent constitution, independent of the State, so constituted that it can effectively legislate for its members on any matter which the supreme authority, the acceptance of which as supreme is a condition of membership, assumes and declares to fall within its jurisdiction.

Marriage and divorce are matters on which it does claim the right to legislate for its own members in all circumstances, and for the rest of the world when it is able to. The source of its authority to legislate about them may be a proper subject of enquiry. The date at which that authority first received the universal recognition of Western Christendom may be difficult to ascertain, or, perhaps, unascertainable. There may have been—indeed, there notoriously have been—inconsistencies and irregularities in the practical application of its doctrines; but the doctrine itself—though it was not finally formulated until more than fifteen hundred years after the death of Christ—is definite enough. Roman Catholics know exactly what they are expected to believe, to do, and to refrain from doing. Those who engage in

controversy with them know exactly what they are challenged to criticize. And that is convenient.

Marriage, according to the Roman Catholics, is not a contract but a Sacrament. Those who marry —provided always that they marry in a Catholic Church—are joined together by God. Such a union—the Church takes no interest in any others —can be dissolved only by death. Man must not, and cannot, put asunder those whom God has thus united. No court of law can untie the knot. The Church itself cannot untie it. The only way of escape lies in the discovery and declaration by the Church that the knot was not, after all, tied properly. The marriage, then, though it cannot be dissolved, can be annulled, and husband and wife set free to contract some marriage which the Church will regard as valid.

What that means and implies may best be shown by imagining and presenting a concrete instance.

A woman, according to the teaching of the Roman Catholic Church, may quite properly get her marriage annulled on the ground that her husband is her third cousin, or that her parents pressed her, against her will, to marry him for his money, or that he had previously promised to marry somebody else, but is not entitled to that relief merely because he has deserted her, and gone off to the Antipodes with another woman, or has infected her with a venereal disease, or has compelled her, by acts of violence, to become a prostitute in order that he may live on her immoral earnings.

That is the thesis, definitely established as an incident in the Counter-Reformation—more than fifteen hundred years, as has already been pointed out, after the death of Christ—by the Council of Trent. English legislators are, of course, perfectly

entitled to ignore it on the ground that, as is set forth in the Articles of Religion already quoted, "the Bishop of Rome hath no jurisdiction in this realm of England", and ought not to have any seeing that "the Church of Rome hath erred". In practice, however, they do not, as a rule, ignore it—though they may ignore parts of it—having the fear of the Roman Catholic vote before their eyes, and having also some reason to believe that that rather aggressive English religious group known as the Anglo-Catholics is readier, in this matter, to follow the lead of Rome than that of either Canterbury or Saint Stephen's, Westminster.

Even in England, therefore, in spite of the Reformation, the Roman Catholic thesis must be faced and the arguments supporting it must be examined in the light of history.

The case rests, as everybody knows, upon a deduction drawn from certain passages in the Gospels in which the Evangelists appear to be reporting Christ's teaching on the subject, so that, if we are not Catholics, and not committed to the acceptance of the authority of either an infallible Church or an infallible Book, we feel both entitled and impelled to raise these further questions :

Is this deduction a fair one ? Do the premises really contain the conclusion which has been drawn from them ? Is it, indeed, possible to be quite certain what scriptural premises dogmatic theology is entitled to take as its starting point ?

A whole book would be needed to treat that branch of the subject exhaustively ; but one can summarize in a paragraph the more important conclusions at which the most competent critics have arrived.

The first point which it is essential to remember

is that the Gospels are not contemporary reports but were written some thirty or forty years after the events related in them; the second, that the original manuscripts have long since disappeared. The earliest manuscripts now in our possession belong to a period more than three hundred years later. They are, that is to say, the copies of copies. We have no guarantee that any of the copyists copied quite correctly; and it is admitted by all theological scholars who have really studied the question, that some passages in the Gospels which we read are additions and interpolations by later writers.

That admission is important. The conclusion obviously follows from it that the actual text on which both the Roman Catholic and Anglo-Catholic theologians base their doctrines cannot by any means be assumed to be the text originally written by the Evangelists for the direction of the Christian world under the plenary inspiration of the Holy Spirit. That inference imposes itself the more obviously because the reports of the different Evangelists, far from being in full agreement, differ in essential particulars; and it must be as hard for a theologian as it is for a logician to picture the Holy Spirit inspiring Evangelists to contradict each other. And, if we accept the conclusion—which it is certainly very hard to avoid—we find our Catholic guides in this position.

They cannot prove or be positive that Christ was the real author of either of the two dicta concerning the indissolubility of marriage which Saint Matthew and Saint Mark respectively ascribe to Him. Either passage, or both passages, may, for anything that they can prove, have been "written in" by propagandists in support of their own views.

On the other hand, on the assumption that one of the two Evangelists did report Christ's words correctly, they neither know nor have any means of ascertaining which of the two versions of His doctrine is the authentic one. And there is a further difficulty. Whichever version they decide to adopt, the precise meaning of the words is doubtful, as scholars of equal competence have interpreted them differently.

The premises, that is to say, are nebulous; and to draw precise conclusions from nebulous premises is a gross abuse of the processes of logic. What is the way out of that difficulty ?

Roman Catholics, of course, may, and do, escape from it by appealing to authority. The Pope has settled the matter for them ; and it was discovered, in 1870, that Popes were, and always had been, infallible. Anglo-Catholics, however, and other members of the Church of England, have no such resource open to them. They do not admit the doctrine of Papal infallibility—for, if they did, they would have to join the Church of Rome—and they are not provided by the constitution of the Church of England with any authoritative substitute therefor which would justify them in taking the line, when their views are challenged, that they are not arguing with us, but telling us.

Assertion such as theirs, unsupported by any appeal to any authority on which they can lay their fingers, is a challenge to argument. There is no better way of meeting the challenge than by presenting a brief and concise historical survey of the subject, in the hope that some of the facts which it brings to light will convince them of the propriety of reconsidering their position.

CHAPTER II

Jewish Marriage Laws—Pre-Mosaic Marriage Customs—The Laws of Moses—Different interpretations of those Laws by different Rabbis.

It is not necessary, for the purposes of this work, to trace the history of marriage from the earliest times. Our concern is with marriage, and the provision made for its dissolution, in Western Christendom, and, more particularly, in England. But something must be said, before we come to that, about the marriage laws and customs of the Jews, for it is part of the clerical thesis that the Christian marriage law, prescribed by the Church—or the Churches—is naturally, and rightly and properly, based upon them.

It is a question, however, whether that claim can be made out. The only way of making it out is to ignore everything that is inconvenient and carefully select appropriate texts and instances; and the difficulty of making it out is equally great whether we accept or reject all the details of the early history of the Jews given in the Old Testament. Those theologians who try to make it out may, therefore, fairly be invited to give a plain answer to this question:

Do you, or do you not, believe that the stories told in the Old Testament about Adam and Eve, and Abraham, Isaac and Jacob, and the other patriarchs are true?

It is an awkward dilemma.

If they do not believe the stories—and many of them readily admit that they do not—they clearly have no right to ask us to infer the Divine intention from them. If they tell us that they do believe them, they have to explain away the embarrassing fact that even those patriarchs and kings who figure in the sacred narrative as the special recipients of Divine favour lived in a manner which modern opinion, both Christian and secular, regards as extremely reprehensible, and that—to keep within the limits of our own subject—the tribal laws and customs of the Israelites actually prescribed as religious duties the contraction of marriages which both the Roman Catholic Church and the Church of England explicitly forbid: incestuous marriage, marriage with a deceased husband's brother, polygamy and concubinage.

We may begin with Abraham. He was related to Sarah precisely as Lord Byron was related to Augusta Leigh; but Byron's most ardent apologists do not cite that parallel as an excuse for him.

We may proceed to Onan whose sin consisted, not in his crude and primitive method of birth-control, but in his refusal to "raise up seed unto his brother". Jewish custom, that is to say, expressly enjoined a marriage which the canon law has always refused to permit.

As for polygamy and concubinage, we find them not only practised, but practised with Divine approval by all those patriarchs who desired and could afford the indulgence. Lamech was the first bigamist. A little later, Jacob had two wives and Esau had three. Jacob had children by both his wives' maids. He "went in unto" Bilhah at Rachel's request, and he "went in unto" Zilpah at Leah's request. It was also at Sarah's suggestion

that Abraham "went in unto" Hagar, though Sarah afterwards became jealous and turned Hagar out of the house.

Nor were these matrimonial excesses confined to the patriarchal age. The Jews did, it is true, in the end out-grow them, but it is notorious that the wisest of their kings had seven hundred wives and three hundred concubines, and that his son, who had several, though not quite so many—one of them, Bath-Sheba, a married woman—is described in the Bible as "a man after God's own heart". Nor is it suggested in the Bible that Esther was doing anything wrong when she entered the harem of King Ahasuerus and took Vashti's place as his Queen.

One does not cite these familiar stories, of course, in any spirit of ribaldry, or for the purpose of deriding or decrying the Jews. It is perfectly natural that primitive Jews, like primitive men of other races, should have tried a number of matrimonial experiments before they succeeded in evolving a sound matrimonial system and discarded the primitive idea that woman was brought into the world to be man's chattel, and that rich men had as good a right to marry several wives as to keep several servants. Their perception of moral values, eventually admirable, was of slow growth.

Knowing that, one refrains from judging the proceedings of the patriarchs by contemporary standards. It would be unreasonable, one feels, to take quite the modern view (though one knows very well what it would be) of the story of Abraham representing his wife as his sister, allowing her to enter Pharaoh's seraglio, and accepting Pharaoh's presents—"sheep and oxen, and he asses and men servants and maidservants and she asses and camels"

—in consideration of his acquiescence in her infidelity. One may even, if one believes the story to be true, admit the possibility that Isaac, when he practised a somewhat similar deception at the Court of King Abimelech, took credit to himself for following a good father's good example.

All that may be allowed; and allowance must also be made for the possibility that the stories are not true. Belief in them is not nowadays considered necessary to salvation; and the Higher Criticism has, as we all know, found formulæ by the skilful use of which the Old Testament can be treated, at one and the same time, as a Holy Book and a collection of fairy tales. But these formulæ, instead of removing our difficulties, confront us yet again with our dilemma.

Either these stories are true or they are not. On the assumption that they are not true we can draw no moral at all from them. On the assumption that they are true the only moral to be extracted from them is an extremely bad one. Indeed, it is only by the use of a scale of values subsequently and independently acquired that our clerical controversialists are able to discover in the Book of Genesis anything "written for our learning" on matrimonial matters.

That scale of values tells them that the ideal marriage was that of Adam and Eve in the Garden of Eden; and they quote the text, "they shall be one flesh". But they need their own scale of values to come to that conclusion. There is nothing in the text of the Bible itself to suggest that the monogamous Adam was a model worthier of imitation than the bigamous Abraham or the polygamous Jacob. Indeed, the opposite suggestion might be found in it seeing that Adam brought sin

into the world, whereas Abraham was promised that in his seed all the nations of the earth should be blessed.

It follows that the help of the Old Testament is not very helpful. The logic which sees in the story of Adam and Eve a proof that God intended marriage to be indissoluble, but refuses to see in the stories of Abraham and Hagar and Jacob and his wives' maids a proof that exceptions to that rule are permissible, is a kind of logic by means of which any desired conclusion could be deduced from any premises whatsoever. It is, however, the logic of those controversialists who, having found their first proof of the indissolubility of marriage in a biblical story which most clergymen disbelieve and ignored the better accredited stories which furnish proofs to the contrary, proceed to support their case by referring to the Law of Moses as expounded in the Book of Deuteronomy, and even trying to read into that statement of the law a meaning which no Hebrew scholar of any competence admits to be correct.

And there, once again, our clerical dialecticians show themselves disingenuous. They omit to tell us three important things:

1. That it is uncertain whether Moses ever legislated on the subject at all.

2. That, even if we assume that he did legislate on it, we can have no guarantee that the law attributed to him in the Book of Deuteronomy is the exact law which he laid down, seeing that our version of the book, though presumably based upon earlier documents, was not produced until the reign of Ezra, some nine hundred years after Moses' death; and

3. That the text which they cite is not the only

passage in the Pentateuch which throws light upon the subject, and that anyone who really wants to take the measure of the superstitions of the age in which the Mosaic code is supposed to have originated, will find some very instructive information if he turns to the fifth chapter of the Book of Numbers and studies the procedure there prescribed by Moses for determining the guilt or innocence of a woman whose husband suspected her of infidelity.

Her husband was to take her to the priest. The priest was to sweep up dust from the floor of the tabernacle, pour water over it, and make the woman drink the mixture. The direction proceeds:

> And when he hath made her to drink the water, then it shall come to pass that, if she be defiled, and have done trespass against her husband, that the water that causeth the curse shall enter into her, and become bitter, and her belly shall swell and her thigh shall rot; and the woman shall be a curse among her people.
>
> And if the woman be not defiled, but be clean; then she shall be free and shall conceive seed.
>
> This is the law of jealousies.

The practice of this barbarous form of trial by ordeal continued until the Romans abolished it. It does not exactly strike one as the last word of wisdom on the law of evidence; nor do our clerical guides themselves take that view of it or go out of their way to attribute its institution to the direction of the Holy Spirit. None the less its authority is, quite obviously, neither greater nor less than, but precisely equal to, that of the passage in Deuteronomy to which they invariably draw our attention. On no logical grounds whatever can it be contended that we have in the Book of Deuteronomy, but have not in the Book of Numbers, the instructive revelation of the Divine will; and our excerpt from

the Book of Numbers does not picture social conditions which seem to call for precisely the same marriage law as the twentieth century.

These points made—and it was important to make them—we will leave Numbers and turn to Deuteronomy in quest of an answer to these questions: Did Moses, if we assume him to have been correctly reported, sanction divorce? If so, on what grounds did he sanction it? Did he intend to permit divorced persons, whether innocent or guilty, to contract other marriages? What, in short, was the actual law of Moses which, as we read in the New Testament, Christ came "not to destroy but to fulfil".

This is the text of the passage which we have to consider:

> When a man hath taken a wife and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her: then let him write her a bill of divorcement, and give it in her hand, and send her out of the house.
>
> And when she is departed out of his house, she may go and be another man's wife.
>
> And if the latter husband hate her, and write her a bill of divorcement, and giveth it in her hand, and send her out of his house; or if the latter husband die, which took her to be his wife;
>
> Her former husband, which sent her away, may not take her again to be his wife, after that she is defiled; for that is abomination before the Lord.

So we read in Deuteronomy xxiv, 1-4. That passage is our starting point and answers our first questions. Moses—or the law attributed to Moses—did allow divorce, did allow the divorced persons to marry again, and only forbade them to resume matrimonial relations with each other. There is absolutely no way of escape from that conclusion

if we accept the Revised Version as an accurate rendering. The only possible way of getting over it is to follow the versions of the Septuagint or the Vulgate, from which it might possibly, though not certainly, be inferred that the divorce which Moses sanctioned was merely what we call "judicial separation", and that, as Dean Luckock argued in *The History of Marriage, Jewish and Christian, in relation to Divorce and certain Forbidden Degrees*, the Mosaic code "contains nothing which justifies the conclusion that it gave legal sanction to the remarriage of divorced persons".

But that really will not do. It is absurd to suppose that, if Moses had really been inspired by the Holy Spirit to provide a divorce law for our guidance, he would not have been inspired to draft that law intelligibly, instead of leaving its meaning to be elucidated by the exegetic ingenuity of a Dean of Lichfield. As it is we find another obscure point which needs clearing up. What, precisely, is that "uncleanness"—paraphrased in the margin of our Bibles as "matter of nakedness"—which, according to the Mosaic code, entitled a man to a divorce ?

Adultery may have been meant ; but if that was all that was meant, then the question of the remarriage of divorced persons, so perturbing to Dean Luckock, does not arise, seeing that the punishment for adultery prescribed by the Mosaic law was death. Sterility and the discovery that the bride is not a virgin are other explanations which have been suggested ; but nothing is certain. Even among the Jews themselves there has not been unanimity of opinion. The opinion of the Chief Rabbi, however, is as authoritative an opinion as one can get—more authoritative, certainly, than that of the Dean of Lichfield ; and this is what Dr. Hermann Adler,

who was Chief Rabbi in 1910, told the Royal Commission:

> The Bible, in recording the institution of marriage, lays down the principle that those who enter upon the conjugal covenant should regard this relation as permanent as their lives. . . . But the Mosaic law also recognizes that circumstances may arise which render the continuance of the matrimonial relation undesirable, if not impossible, when marriage, instead of being the source of supremest happiness, becomes the origin of deepest misery. . . .
>
> The husband was required to put away his wife when she had committed adultery, this offence not being viewed merely as an injury inflicted on the husband, which might be condoned, but as a crime which saps the foundation of marriage, and makes its continuance impossible. . . .
>
> Divorced persons were allowed to marry anyone, after the expiration of three months, with the exception of the individual with whom the husband or wife had been guilty of adultery.

That is as complete an answer as anyone could wish for to any attempt to discover any support for the doctrine of the Roman Catholics and the Bishop of Chichester that any marriage properly concluded is indissoluble in the Jewish law. In appealing to it for support, our clerical friends are actually appealing to a code which not only allows the dissolution of marriage but also, in certain circumstances, enjoins it; and it also seems clear, from Dr. Adler's exposition, that there was no need for the law to give specific permission for the re-marriage of the divorced because that right was one which it would never have occurred to any Jew to question.

The real value and significance of the Law of Moses in this matter, whatever its origin, is the fact that it was an early and partial assertion of the rights of women.

Moses, indeed, might be described as the first of the Feminists. Women, before his time, were

merely chattels—first their fathers' chattels and then their husbands'. He gave them a certain legal status. He forbade fathers to sell their daughters to foreigners. He did not abolish polygamy, but he limited the privileges of the polygamist, declaring that "if he take him another wife, her food, her raiment and her duty of marriage shall he not diminish". And he did something to strengthen the position of all married women.

Before he legislated, any husband who was tired of his wife could, at any moment, without any formality, and without assigning any reason, send her back to her parents. The new law gave her a certain, though only a limited, protection. Mere verbal dismissal was declared by it to be insufficient. A "git", or writing of divorcement, must be handed to her, or, as we should say, a "writ" must be "served"; and some cause for the divorce—though it is impossible to make out exactly what cause sufficed—must be shown.

It was a beginning—a step, though only a short step, in the right direction. Further steps in the same direction were taken from time to time—the strange, but very proper provision, for example, that the husband must be sober when he served the writ. Arrangements were also made whereby, though the law did not allow a wife to divorce her husband, she could, in certain circumstances, compel him to divorce her; and we feel that we are getting very near to divorce by mutual consent when we read in the *Responsa Asheri*, xlii, 1: "To assimilate the right of the woman to the right of the man it is decreed that, even as the man does not put away his wife except of his own free will, so shall the woman not be put away except by her consent."

So the law developed. Just as our Statute Law is supplemented by a series of rulings by successive judges, so the Law of Moses was interpreted and modified by the casuistry of Rabbis; and the time came when Rabbi differed from Rabbi in his interpretation of it almost as acutely as Romanists differ from Protestants in their interpretation of certain portions of the New Testament. In the end—at the beginning of the Christian era—there were two main schools of thought among them: those respectively of Shammai and Hillel.

This is the definition of their differences given by Dr. Hermann Adler:

> The former school limited the right of the husband to divorce his wife to the case of moral delinquency on the part of the woman, while the school of Hillel permitted divorce for any cause that might disturb domestic peace. Though legally the school of Hillel prevailed, divorce was, on ethical grounds, deprecated by the Rabbis in general. Stress was laid upon the denunciation of Malachi: "For the Lord, the God of Israel, saith that he hateth putting away."

Hillel's views, indeed, were what we should call "advanced". All accounts represent him as a most saintly man—the author of a number of moral precepts very similar to those contained in the Sermon on the Mount; but he nevertheless held, citing the Mosaic text, that a man might properly divorce his wife merely because he found that he did not like her, or because she was an incompetent cook.

Nor can it be doubted that his interpretation of the Law of Moses was correct. The text of the third verse of our extract from Deuteronomy—the verse which the clerical controversialists generally forget to quote—settles the point beyond the

possibility of question. As a moralist Hillel may have been wrong; but as a textual critic he was right.

Such was the position—and such were the divisions of Jewish opinion—in the Jewish world to which Christ preached at the time when He began to preach to it.

CHAPTER III

Christ's interpretation of Jewish Law—Different reports of it by different Evangelists—Saint Paul's low ideal of marriage contrasted with Christ's high ideal.

CHRISTIAN supporters of the doctrine of the indissolubility of marraige naturally attach great importance to Christ's teaching on the subject; but they cannot silence opposition by quoting it because they unfortunately do not know, and have no means of finding out, either what Christ said or what He meant.

All that they know—all that anybody knows—is that Christ's answers to questions said to have been put to Him either by disciples anxious for guidance or by Pharisees who wanted to argue with Him, are differently reported by different Evangelists.

The questioners, whether disciples or Pharisees, were Jews. The answer, therefore, whatever it may have been—whatever far-reaching secondary significance subsequent theologians may have discovered in it or read into it—was primarily a ruling addressed by a Jew to Jews on the interpretation of the Law of Moses. Did Christ favour the lax interpretation of Hillel or the strict interpretation of Shammai?

That was the question. The answer favoured Shammai's interpretation. So far the versions of the Evangelists concerned are in accord; but then we come to a difference about which much ink has been spilt through the ages.

"Is it lawful," Christ was asked—the question is said to have been put first by the Pharisees and then by the disciples—"for a man to put away his wife?" The answer reported by Saint Mark is: "Whosoever shall put away his wife and marry another, committeth adultery against her. And if a woman shall put away her husband, and be married to another, she committeth adultery." And Saint Mark adds the injunction: "What God therefore hath joined together let not man put asunder." In Saint Matthew's account this injunction does not appear, and the prohibition of divorce is qualified, running thus:

"Whosoever shall put away his wife, *except it be for fornication*, and shall marry another, committeth adultery."

A third report, found in Saint Luke's Gospel, agrees with Saint Mark's version.

The contradiction is glaring. Which version ought we to accept as correct?

It has been seriously contended by some controversialists that Saint Mark and Saint Luke must be followed because they are in a majority of two to one. It has been contended with equal seriousness by others that Saint Mark must have been right because his was the earliest of the Gospels. Arguments of that sort, however, are more ingenious than convincing, and leave us floundering helplessly in the face of yet another dilemma:

On the assumption that the writings of the Evangelists were inspired by the Holy Spirit, how did it come about that the Holy Spirit inspired two Evangelists to make two diametrically conflicting statements? On the assumption that they were not inspired, what grounds have we for accepting either report, even if we can find some internal evidence favouring the probability that it is accurate,

as authoritative and binding on the whole Christian world ?

There is no way of escape from that dilemma. The only honest thing to say is that the whole matter is clouded with a doubt : that though the ideal of marriage presented in the reports of Christ's preaching is a high one, it is absolutely impossible to say whether He did or did not allow an exception to the rule that marriage was indissoluble. Moreover, even if we could be quite sure that Saint Mark's report was the true one, we should still have to seek answers to other questions hardly less embarrassing—and notably this question :

Was Christ, when He spoke as reported, dictating a law or only holding up an ideal ?

The latter view is taken, even by the Churches, of many of Christ's sayings. The Churches do not call upon all rich men to obey Christ's injunction to sell all that they have and give the proceeds to the poor, or the man whose coat has been stolen to invite the thief to take his cloak also, or the victim of assault and battery to turn the other cheek to the smiter. On the contrary, our own Thirty-nine Articles declare that "the Riches and Goods of Christians are not common, as touching the right, title, and possession of the same", and that "it is lawful for Christian men, at the command of the Magistrate, to wear weapons, and serve in the wars". In these matters, it is generally admitted, Christ was not legislating but only preaching. What reason have the Roman Catholics—what reason has the Bishop of Chichester—for maintaining that the prohibition of divorce, if we accept it as authentic and correctly reproduced, was intended to be of more general and literal application than these other injunctions ?

One would like the Bishop of Chichester to give an answer to that question—to answer it, if he can, in such a way that no one would ever think it worth while to raise the question again; and one would also be glad of answers to the similar questions which arise when our spiritual directors invite us, as they often do, to consider and be guided by the testimony of Saint Paul, set forth in his First Epistle to the Corinthians:

"Unto the married I command, yet not I, but the Lord, Let not the wife depart from her husband.

"But and if she depart, let her remain unmarried, or be reconciled to her husband: and let not the husband put away his wife."

That seems precise enough; but it is no whit more precise than various other Pauline precepts—the precept, for instance, that women should keep silence in the Churches and should not be suffered to teach; and those who ignore these precepts, as even our bishops do at Church Conferences, are clearly not entitled to infer that the former precept is binding merely because they find it in the Apostle's writings. Either all the precepts are binding, or else none of them is binding, and any of them can be challenged.

It must, of course, be admitted that Saint Paul did sometimes claim that his teaching was inspired. "I certify you," he wrote to the Galatians, "that the Gospel which is preached of me is not after man. For I neither received it of man, neither was I taught it, but by the revelation of Jesus Christ".

There is the claim. But what does it amount to? What does it mean and imply?

It is not a report of a conversation, for Saint

Paul admittedly never met Christ in the flesh. It can only be—and, indeed, as the context shows, obviously is—the assertion of a claim that the writer has been inspired by God to declare and interpret Christ's will and teaching on certain matters. The doctrine in support of which he asserted the claim was that of justification by faith. No doubt he imagined that he was as well qualified to instruct the Corinthians about marriage as to instruct the Galatians about faith; but his qualifications are questionable, and his lack of them is a matter on which it is proper to speak plainly.

What Saint Paul said about divorce can, no doubt, be made to square with the words which Saint Mark attributes to Christ; but there the similarity between their teaching ends. Saint Paul's teaching differs from Christ's teaching about marriage as light from darkness.

Whatever Christ's teaching about divorce may have been, his ideal of marriage was a high one, and he spoke of the married life as an ideal state: "For this cause shall a man leave his father and mother, and cleave to his wife; and they twain shall be one flesh: so then they are no more twain but one flesh." Saint Paul's ideal of marriage was low and degrading; and his teaching differed from Christ's in two important respects.

In the first place he tolerated, though he did not go out of his way to recommend, polygamy—a toleration obviously implied by the provision that a bishop, in addition to being "sober", "of good behaviour" and "given to hospitality", should also be "the husband of one wife". In the second place, he laid down, in opposition to Christ, that not marriage but celibacy was the ideal, and that marriage was, at the best, a necessary evil, required

to regularize deplorable, but powerful, human instincts.

Saint Paul writes on the subject in the spirit, not of a disciple of Christ, but of an Early Father. We find in his writings the germs of that exaggerated asceticism which was presently to go a long way towards making Christendom ridiculous. The companionship which is found in happy marriages meant nothing to him. Love, as modern men and women understand it, meant nothing to him. He did not look at the matter from a woman's point of view at all; and, looking at it from a man's point of view, he saw nothing in it except a provision for the satisfaction of sexual cravings which it would be better, if it were possible, to leave unsatisfied.

"It is good," he said, "for a man not to touch a woman."

"Nevertheless," he conceded, "to avoid fornication, let every man have his own wife, and let every woman have her own husband."

He himself was a celibate and proposed to remain a celibate. He had no desire to marry, and would have liked to see all men equally indifferent to feminine allurements. But he had to admit that they were not, so he concluded:

"I say, therefore, to the unmarried and widows: It is good for them if they abide even as I.

"But if they cannot contain, let them marry: for it is better to marry than to burn."

And then, approaching the subject from another point of view, he drew this distinction between matrons and maids:

"The unmarried woman careth for the things of the Lord, that she may be holy both in body and in spirit; but she that is married careth for the things of the world, how she may please her husband."

This attitude of the Apostle of the Gentiles needs to be realized in order that we may take the exact measure of the clerical argument against divorce which is based upon his teaching, and may be roughly, but not unfairly, summarized thus:

"Divorce must be regarded as sinful because it was deprecated by a preacher who, on his own showing, was untroubled by sexual temptations, who saw no harm in bigamy for anyone except a bishop, whose conception of marriage was disgustingly degraded and low, seeing that he thought of it merely as a device for the avoidance of fornication, and was under the odd and obviously erroneous impression that all spinsters are devout and all married women indifferent to religion."

What are we to think of the intelligence of clergymen who quote such an authority on such a question? What except that Lord Clarendon had reason on his side when he spoke of clergymen—his words were quoted, with approval, to the Royal Commission by Canon Hensley Henson—as "persons who understand the least and take the worst measure of human affairs of all mankind that can read and write?"

One finds, however, another point in Saint Paul's teaching which ought not to be overlooked.

"The time," he wrote, "is short", meaning that the Second Coming of Christ, which he was expecting, might occur at any moment, and that it would then matter little, if at all, whether any man, or any woman, were married or single; but he was not always thinking about that, and one can discover certain inconsistencies in his teaching.

His view of widows, for one thing, underwent a most remarkable transformation, though we do not know what experience of widows had induced

him to modify it. He told the Corinthians that, though he thought it permissible for a widow to re-marry, it was much better for her not to do so, adding: "She is happier if she so abide, after my judgment; and I think also that I have the Spirit of God." To Timothy, however, he wrote as a man who was far from satisfied with the behaviour of the widows—more particularly the younger ones—and could think of no better device than marriage for checking their lamentable frivolity and keeping them out of mischief.

"They learn to be idle," he wrote, "wandering about from house to house; and not only idle but tatlers and busybodies, speaking things which they ought not."

"I will therefore," he concluded, "that the younger women marry, bear children, guide the house, give none occasion to the adversary to speak reproachfully."

On the assumption that Saint Paul really wrote all the Pauline Epistles—and nobody knows for certain whether he did or not—these are the sayings about marriage of which we have to make what we can.

We cannot, however, easily make very much of them. Too many considerations limit the importance which a rational critic can attach to them. It will be useful to enumerate them even at the risk of repetition.

1. The precepts are inconsistent—we have just seen Saint Paul advising one group of disciples to marry and another group not to marry—and inconsistent teachers cannot be accepted as inspired teachers.

2. The Churches, though they speak of Saint Paul with high esteem and in a pious tone of voice,

are far from attaching equal importance to all his precepts. The Church of Rome, though it calls him as a witness in favour of the indissolubility of marriage, studiously ignores what he says in favour of a married clergy. The Church of England does not consider itself bound by his rule that women must not preach. But if there are any grounds for supposing that he spoke with authority in the one case and without authority in the other, they have yet to be produced.

3. Saint Paul was a Second Adventist. He wrote on marriage, as on other subjects, on the assumption that, before very long, his correspondents would "see the Son of Man coming in a cloud of power and great glory" to judge, reward, and punish them. All his views and injunctions were conditioned by that erroneous expectation and are, therefore, not necessarily applicable to a society which knows the expectation to have been mistaken and has long ceased to entertain it.

4. Saint Paul never spoke or thought of marriage as a spiritual union. Those of us who do so think of it—who feel that that is what it ought to be and know that that is what it can be—refuse, and may quite reasonably refuse, to bow to the authority of an Apostle whose ideals they know to have been lower than theirs, seeing that he recommends marriage on no other grounds than that it may help to keep men out of brothels and women out of mischief.

And there is yet another point to be made: that Saint Paul, far from being accepted as the legislator of the Christian world, cannot even be regarded as the mouthpiece of the Church.

At the time when he wrote, there were Churches, but there was no Church. What we understand by

the Church was an organization of slow growth; and our next step must be to trace the stages by which a number of disconnected and isolated Churches were fused into one body with a centralized authority, empowered—or, at any rate, claiming to be, and believing itself to be, empowered—not merely to give advice, as Saint Paul did, but to lay down the law on matrimonial matters.

CHAPTER IV

The Early Fathers—Their austerities, inhumanity and uncleanliness—Reasons why no useful guidance can be derived from their writings.

SATISFIED that Saint Paul's pronouncements on divorce may be dismissed as negligible because his views of marriage were coarse and crude, we turn to the testimony of the so-called Early Fathers. They are commonly quoted with great respect—though with most respect by the people who know least about them—in discussions of our subject; but it is just as well, before quoting them, to make the necessary reservations. And as this book is written, not for theologians or lawyers, but for the general public, it is proper to begin by answering the question which some readers may ask:

Who were the Early Fathers? With what authority did they speak?

They are, to give them their full title, Early Fathers of the Church—the theological writers of the first period of Church History, which we may take as ending about A.D. 700.

They do not rank with the Evangelists. Their writings are not "canonical". It is not claimed for them, even by those who esteem them most highly, that they were inspired—whatever the word "inspired" may mean—or that they had vested in them any authority to declare the law of any organized, universal Church. They wrote before the Churches were fused into a single Church. They spoke,

that is to say, for themselves; whence it follows that an expression of opinion by an Early Father, whether we agree with it or not, has no more claim to be accepted as a ruling of any Church, or as an authorized exposition of Christian Law, than has an expression of opinion by, let us say, Dean Inge or Father Woodlock.

And that is as it should be seeing that these Early Fathers, like Dean Inge and Father Woodlock, are by no means always of one mind about the various matters which they pass in review. *Quot homines, tot sententiæ* was the motto then. Not until much later do we find ourselves confronted with that other motto: *Quod semper, quod ubique, quod ab omnibus.*

That is our first reservation—and a very necessary one. The second has to do with the qualifications of the Early Fathers for advising us on the matter under discussion—a matter into which, as no claim of inspiration is made on their behalf, a layman may presumably enquire without disturbing any theological susceptibilities, the questions to be raised being these:

Was the religion which the Early Fathers preached actually, as well as nominally, the religion preached by Christ? Did the religious atmosphere which they endeavoured to create, and, to a large extent, succeeded in creating, bear any resemblance to the atmosphere in which religious men of the present day, whether Catholic or Protestant, live and move and have their being? Can they really be regarded by anyone who has taken the trouble to acquaint himself with their idiosyncrasies as guides on whom it is reasonable to rely for help in an attempt to solve any problem concerning the relations between men and women?

The answer to all these three questions is most emphatically in the negative. The spirit of the teaching of the Early Fathers differs widely from that of the Gospels, the difference being thus admirably summed up by Lecky in his *History of European Morals*:

> If an impartial person were to glance over the ethics of the New Testament, and were asked what was the central and distinctive virtue to which the sacred writers most continually referred, he would doubtless answer that it was that which is described as love, charity or philanthropy. If we were to apply a similar scrutiny to the writings of the fourth and fifth centuries, he would answer that the cardinal virtue of the religious type was not love, but chastity.
>
> And this chastity, which was regarded as the ideal state, was not the purity of an undefiled marriage. It was the absolute suppression of the whole sensual side of our nature. The chief form of virtue, the central conception of the saintly life, was a perpetual struggle against all carnal impulses, by men who altogether refused the compromise of marriage.

The Early Fathers, that is to say, were not, in this matter, followers of Christ. In so far as they followed anyone, they followed Saint Paul, who would unquestionably have cut the unpopular figure of a skeleton at the feast if he had been a guest at the marriage banquet at Cana in Galilee. Their teaching is not the amplification of Christ's teaching; but the *reductio ad absurdum* of Saint Paul's. And as they were not followers of Christ, there is no reason why those who profess to follow Christ should follow them. There is, on the contrary, every reason why they should not do so.

Christian teaching was already, in their hands and in their discourses, being radically modified. For the first time—but by no means for the last

time—in the history of the long process of ecclesiastical development, we find ecclesiastical leaders of thought retaining old formulæ, and repeating them with all the old emphasis, while giving them new contents and a new meaning: a dialectical process which, to the lay observer, somewhat suggests a teetotaller still describing himself as such in spite of the fact that he has become a toper, because he conscientiously keeps his whisky in a teapot and always drinks it from a teacup.

It is therefore worth while to look a little more closely at these Early Fathers.

Many of the stories told about them in the *Lives of the Saints* are unquestionably lies, though Froude got into trouble with Cardinal Newman for suggesting that that was the case with the Blessed Saint Neot. It is almost impossible to determine which of the stories are false and which are true. But that is no great matter. At the time when the stories were told they were believed. We may take it, therefore, that, whether true or false, they reflect both the ideals of the Early Fathers and the spirit of the age in which they flourished; and they strike two notes.

One note is that of revolt against the love which marriage sanctifies. The other is that of revolt against all the obligations and manifestations of family affection. One may, perhaps, add a third note, equally characteristic and equally loudly sounded: that of revolt against the purifying use of soap and water.

One must not, of course, make these charges without proving them; but the sceptical will find ample proof of them in Lecky's well-documented pages. This is what Lecky says in connection with their thesis that uncleanliness is next to godliness:

The cleanliness of the body was regarded as a pollution of the soul and the saints who were most admired had become one clotted mass of filth. Saint Athanasius relates with enthusiasm how Saint Antony, the patriarch of monachism, had never, to extreme old age, been guilty of washing his feet. . . . Saint Abraham, the hermit, who lived for fifty years after his conversion, rigidly refused from that date to wash either his face or his feet. Saint Euphraxia joined a community of one hundred and thirty nuns who never washed their feet, and who shuddered at the mention of a bath.

That is a fairly significant beginning. We may proceed to quote Lecky's account of the revolt against love:

With many of the hermits it was the rule never to look upon the face of any woman, and the number of years they had escaped this contamination was commonly stated as a conspicuous proof of their excellence. Saint Basil would only speak to a woman under extreme necessity. Saint John of Lycopolis had not seen a woman for forty-eight years. . . . A young Roman girl made a pilgrimage from Italy to Alexandria to look upon the face and obtain the prayers of Saint Arsenius, into whose presence she forced herself. Quailing beneath his rebuffs, she flung herself at his feet imploring him, with tears, to grant her only request—to remember her, and to pray for her. "Remember you?" cried the indignant saint, "it shall be the prayer of my life that I may forget you." The poor girl sought consolation from the Archbishop of Alexandria, who comforted her by assuring her that, though she belonged to the sex by which demons commonly tempt saints, he doubted not the hermit would pray for her soul, though he would try to forget her face.

And then, to complete the picture, Lecky gives us this graphic account of the revolt against family ties:

The ablest men in the Christian community vied with one another in inculcating as the highest form of duty the abandonment of social ties and the mortification of domestic affections. . . . The invectives of the clergy were directed

against those who endeavoured to prevent their children flying to the desert. Saint Chrysostom explained to them that they would certainly be damned. . . . Saint Jerome, when exhorting Heliodorus to desert his family and become a hermit, expatiated with a fond minuteness on every form of natural affection he desired him to violate. . . .

. . . Saint Gregory the Great assures us that a certain young boy, though he had enrolled himself as a monk, was unable to repress his love for his parents, and one night stole out secretly to visit them. But the judgment of God soon marked the enormity of the offence. On coming back to the monastery, he died that very day, and when he was buried the earth refused to receive so heinous a criminal. His body was repeatedly thrown up from the grave, and it was only suffered to rest in peace when Saint Benedict had laid the Sacrament upon his breast.

One nun revealed, it is said, after death, that she had been condemned for three days to the fires of purgatory because she had loved her mother too much. Of another saint it is recorded that his benevolence was such that he was never known to be hard or inhuman to anyone except his relations. Saint Ronauld, the founder of the Camaldolites, counted his father among his spiritual children, and, on one occasion, punished him by flagellation.

And so on and so forth. There are many pages of such stories to be found in Lecky's book, and many more such stories are to be found in other books, and none of them are irrelevant to this discussion; for when our clerical friends call Early Fathers as witnesses or cite them as authorities, it is only right and reasonable that we should insist upon being allowed to see those Early Fathers as they really were.

When we succeed in so seeing them—when we realize that they did not, in the least, resemble the seemly, sympathetic clergymen we are used to, but were unwashed and unkempt fanatics, somewhat like Indian fakirs, in whose eyes woman was the incarnation of all that is evil and family affection one of the deadly sins—we need feel no shame in asking:

Is there any sense in looking to the weird men who took these ignoble views of all the human relationships which Christ blessed for instruction in such matters as marriage and divorce?

The Bishop of Durham—he was then Canon Hensley Henson—seems to have considered that question before appearing before the Royal Commission; for he waved the authority of the Early Fathers aside with a gesture of lofty scorn.

"The writers," he said, "are totally ignorant of natural science; secondly, their notions of Scripture are quite fantastic sometimes; thirdly, they are dominated everywhere by morbid asceticism. . . . Then there is the ecclesiastical and dogmatic presuppositions of the writers. Those four reasons go far to render the patristic and casuistic literature of the Middle Ages of very little good for our guidance to-day."

That is satisfactory as far as it goes; but Dr. Hensley Henson might very well have gone a good deal farther.

Not only is the teaching of the Early Fathers equally opposed to the Spirit of Christ and to the spirit of the present day. We all know perfectly well—even the ecclesiastics who quote them with reverence know perfectly well—that if a prelate of the present day were to go about with a dirty face, unbrushed hair and a tangled beard, looking like a shock-headed Peter, and talk and behave as these Early Fathers talked and behaved, he would infallibly be certified and sent to a lunatic asylum as a religious maniac. We also all know perfectly well that the conclusions of these holy men, so shockingly in need of a good wash and brush-up, were deduced from premises which the polished and devout ecclesiastics of our own time—the Bishop of Chichester, for example—are always careful to disclaim.

Let us point the contrast and insist upon it.

Even our bachelor archbishops and bishops reject the Pauline for the Christian view of marriage. Dr. Bell, Bishop of Chichester, does not tell us that "it is better to marry than to burn", or that "it is good for a man not to touch a woman". He tells us that "marriage is the happiest of all human experiences for the man or the woman who enters into it with the right partner". And the whole bench of bishops is with him.

All the bishops, that is to say, both married and single, profess to regard marriage as a good thing—an end in itself—for other people, if not for themselves, not as a deplorable evil which it is better to sanction as the only practical safeguard against promiscuous fornication. They speak of the intimacies of marriage as sacred things. They talk of the "duty" and the "privilege" of "parenthood".

Let us, by all means, commend them; but let us also note how different was the language of the Early Fathers:

Marriage, for them—to quote Lecky again—was "a condition of degradation from which all those who aspired to real sanctity should fly", and that intimacy which can result in parenthood was a thing which even married saints would do better to avoid. And Lecky adds a few anecdotes, taken from *Lives of the Saints*, in illustration of their point of view:

Saint Nisus, when he had already two children, was seized with a longing for the prevailing asceticism, and his wife was persuaded, after many tears, to consent to their separation. Saint Ammon, on the night of his marriage, proceeded to greet his bride with an harangue upon the evils of the married state, and they agreed, in consequence, at once to separate. . . . Saint Abraham ran away from his wife on the night of his marriage. . . . Saint Gregory of

Nyassa—who was so unfortunate as to be married—wrote a glowing eulogy of virginity, in the course of which he mournfully observed that this privileged state could never be his. He resembled, he assures us, a man who contemplates a tree the fruit of which he must never enjoy; or a thirsty man who was gazing on a stream of which he never can drink; or a poor man whose poverty seems the more bitter as he contemplates the wealth of his neighbours; and he proceeded to descant in feeling terms upon the troubles of matrimony. . . .

And then, a few pages further on, we get this story:

Saint Gregory the Great describes the virtue of a priest who, through motives of piety, had deserted his wife. As he lay dying, she hastened to him to watch the bed, and, bending over what seemed the inanimate form of her husband, she tried to ascertain whether any breath still remained, when the dying saint, collecting his last energies, exclaimed: "Woman, begone; take away the straw, there is fire yet."

That, it seems, is what those holy men, the Early Fathers, were like at their holiest. Such were their matrimonial ideals; and the matter is one upon which, when we see a pious and learned theologian like Dean Luckock boasting of the support which his own attitude towards marriage derives from their writings, it is really important to insist.

Our well-conducted modern ecclesiastics are, as we all know, as far from accepting the matrimonial ideals of the Early Fathers as they are from imitating the shocking examples of Pope John XXII, who was condemned for incest and adultery; of the abbot-elect of Saint Augustine of Canterbury, whom investigation proved to have seventeen illegitimate children in a single village; of the abbot of Saint Pelayo, in Spain, who was proved to have kept seventy concubines, or of the Bishop of Liège,

who was deposed for having sixty-five illegitimate children. But if they reject the ideals, why should they respect the opinions and rulings? Can they not realize that it is no less absurd to attach importance to the views which these grotesque fanatics expressed about divorce, than it would be to sit at their feet and listen reverentially to their fierce denunciations of the washing of the face and hands as carnal pleasures to be avoided by all those who are bent upon living devout and holy lives?

It is, indeed, the more absurd to look to them for guidance because, collectively, they give none.

They lived, it must be remembered, in a world governed by Roman Law, modified by the laws and customs introduced by invading barbarians, with wide latitude allowed to local usages. Their opinions were sometimes sought by members of their flocks; but they spoke only to their flocks, not as the Popes eventually arrived at speaking, to the entire Christian world; and they by no means spoke with a unanimous voice.

Dean Luckock makes great play with the writings on the subject of a certain Hermas whom Origen declares to have been "inspired by God". He quotes this passage from his imaginary conversation with "the shepherd, the angel of repentance":

> And I said to him, permit me to ask you a few questions. Say on, said he, and I said to him, If anyone has had a faithful wife in the Lord, and has detected her in adultery, does the man sin if he continue to live with her? And he said to me, As long as he remains ignorant of her sin, the husband commits no transgression in living with her; but if the husband know that his wife has gone astray, and if the woman has not repented, but persists in her fornication, and yet the husband continues to live with her, he will be guilty of her crime and a partaker of her adultery.
>
> And I said to him, What, then, sir, is the husband to do

if his wife continue in her vicious practices? And he said, The husband shall put her away, and remain by himself; but if he has put his wife away, and married another, he also commits adultery. And I said to him, What if the woman put away has repented, and wish to return to her husband: shall she not be taken back by her husband? and he said to me, Assuredly. . . . In view, therefore, of her repentance, the husband ought not to marry another when his wife has been put away.

That sounds formidable. Dean Luckock presents it to us with an air of triumphant exultation. But its significance dwindles when we remember three pertinent facts.

In the first place neither Dean Luckock nor anybody else knows who Hermas was. In the second place Origen was no more in a position than Dean Luckock himself to know whether Hermas was or was not "inspired by God". In the third place Hermas is only one Early Father among many; and a statistical student of the *obiter dicta* of the Early Fathers has discovered thirty supporters and only twenty-seven opponents of divorce—a majority of three in favour of it in a dispute in which we discover fifty-seven controversialists taking part.

The testimony of Hermas, therefore, by no means settles the case. His opinion may fairly be balanced by that of Saint Basil, who writes that he "is not sure that a woman can be called adulterous who lives with an adulterous man", and that "the man who is divorced is pardonable and the woman who lives with him is not condemned", and that "the wife will take back her husband when he returns to her from his whoring, but the husband will cast forth a sinful wife from his house".

Nor is that all. A careful perusal of the pronouncements of the Early Fathers on divorce shows,

not only that they contradicted each other, but also that some of them contradicted themselves.

Saint Jerome, at one time, seemed quite sure of his ground. This is what he wrote in his *Commentary on the Gospel according to Saint Matthew:* "As long as the husband lives, although he be an adulterer, a Sodomite, a man loaded with every crime, and on that account abandoned by his wife, he is her husband and she cannot marry another."

But Jerome is really a discredited witness in view of his hatred of the whole idea of marriage—his prediction that "evangelical chastity will cut down the forest of the law and of marriage"; and it is recorded that when Fabiola—a devout Roman lady who signalized her conversion to Christianity by founding the first public hospital—did this very thing, Jerome made excuses for her.

Saint Augustine is another Early Father who changed his mind on the subject. He is not, in any case, a very reputable witness. The depravities of his unregenerate days were lamentable. He dismissed a mistress who had been faithful to him for fourteen years, leaving her and her family unprovided for, in order to become a saint. But we will not dwell upon that. We will confine ourselves to his inconsistencies.

In one passage in his works he pronounces the re-marriage of divorced persons to be a crime. In another he says that the sin thus committed is only a venial one, and, in a third, that, if a man's wife fails to bear him children, he is not at all sure that he is justified in forbidding him to take a concubine.

Logic here compels the conclusion that, if Saint Augustine spoke with equal authority on all these three occasions, then he spoke with no authority whatever on any of them; and anyone who is bold

enough to quote his declaration that the re-marriage of divorced persons is a crime as authoritative, must be invited to tell us on what grounds he refuses to regard as equally authoritative the sanctioning of divorce by Lactantius, who is admitted by Dean Luckock to have been as "undoubted witness to the introduction of the laxer view of permitting re-marriage to the innocent party", or these strong remarks by Epiphanius:

"The man who does not find a dead wife sufficient, when he has divorced her on account of fornication, or adultery, or some other crime, if he marries another wife, or the woman weds another husband, the authority of the Holy Scripture absolves them from all blame."

And with that quotation this interesting branch of the subject may properly be left, the principal conclusion established being that it is not an important branch of the subject.

It might very well have been left alone if so many ecclesiastical opponents of divorce had not entered upon it. As they had done so, it was necessary to follow them, meet them on their own ground, and demonstrate three things: that the Early Fathers were not the sort of people to whose opinions on marriage and divorce it is dignified, or even decent, to defer; that their opinions were so various that they would not be helpful even if one did defer to them; and that no challenge on the subject worth taking up was thrown down until the Churches were fused into a single Church, and that Church claimed, and was allowed, the right to legislate in this matter for all Christendom.

CHAPTER V

The Christianized Roman Empire—Divorce regulated but not forbidden—Gradual establishment of Papal authority—Definition of the Roman Catholic Doctrine of Divorce by a witness before the Royal Commission on Divorce and Matrimonial Causes.

We will now turn from the Early Fathers to the Ancient Romans.

Christ, as has already been pointed out, when speaking of divorce, spoke as a Jew to Jews. The Roman Law concerned neither him nor them. Their Roman rulers did not interfere with them in such matters, but left them free to make their own arrangements.

Christianity, however, spread. Few Jews became Christians, but many Romans did so. Early in the fourth century Constantine the Great made the new religion the official religion of the Empire. But the Empire had marriage laws and divorce laws of its own which conflicted with Christian principles. Christian Emperors naturally felt the need of modifying Roman law to meet Christian requirements. They, not the Evangelists or the Early Fathers, were the first legislators on the subject in the modern world.

Marriage, in the early days of Rome, had been a form of slavery. However the husband acquired his wife—we need not go into the various ways by which he might do that—he became her absolute master. He had the right, not only to beat her,

but to put her to death for quite trivial delinquencies, such as drinking wine. She had no remedy if he took a concubine, and he could divorce her if he found her barren.

Such were the matrimonial conditions of the "good old times", glorified by Macaulay in his *Lays of Ancient Rome.*

Gradually, as the result of increasing wealth, success in the world and contact with other countries and other religions, the Romans became more civilized. Feminists arose among them and successfully asserted their claims. Women were given the right of owning property and became a power in the land. Among the rights which they demanded and procured were those of refusing to marry unless they wished to do so and of dissolving marriages which dissatisfied them. Consequently, in the later days of the Republic and the early days of the Empire, divorce could be arranged by mutual consent or insisted upon by either of the partners. The dissolution of the marriage was a private matter with which the State interfered only for the protection of threatened pecuniary interests.

It is a moot question whether the latitude thus accorded resulted in moral laxity or merely regularized a laxity which already existed.

A large number of people—some quite important and respectable people among them—certainly availed themselves of the privilege of changing their matrimonial partners. Cicero divorced his wife for the sole purpose of taking another with a larger dowry. Cicero's daughter, Tullia, was divorced by three husbands. The Emperor Augustus divorced two wives, but found peace at the last, and lived happily with his third wife for forty-three years. Martial mentions a woman who had ten

husbands. Juvenal tells us, in his *Satires*, of a woman who married eight husbands in five years. Cæsar and Mark Antony had four wives. Pompey had five. Seneca speaks of "noble women" who "count their age, not by the number of consuls, but by the number of their husbands".

"So here," say the preachers, "we see the condition of shamelessness from which Christianity delivered the world"; but that is not so certain.

Exaggeration is the last infirmity of religious minds. Poets and satirists are also addicted to it. The pagan world probably was not as black, and the Christian world certainly was not as white, as it has been painted. As the American Prohibitionists have discovered, it is one thing to lay down strict rules and quite another thing to enforce strict practices; and those students of the period who are not preachers do not accept the preachers' pictures of them without qualification. Sir Samuel Dill was of opinion that, even in Juvenal's time, the morality of women of the middle classes "was probably as high as the average morality of any age"; while the learned German historian, Dr. Friedlaender writes: "There is nothing to show that in Imperial Rome shamelessness ever went so far as it did in Paris about the middle of the eighteenth century."

The Christian Emperors, however, legislated on the subject; and we find evidence of their interest in it in the account of Valentinian II given in Gibbon's *Decline and Fall of the Roman Empire.*

The polygamy of Valentinian is seriously attested by an ecclesiastical historian. The Empress Severa (I relate the fable) admitted into her familiar society the lovely Justina, the daughter of an Italian governor; her admiration of those naked charms, which she had so often seen in the

bath, was expressed with such lavish and imprudent praise that the Emperor was tempted to introduce a second wife into his bed ; and his public edict extended to all the subjects of the Empire the same domestic privilege which he had assumed for himself.

But we may assume, from the evidence of reason as well as history, that the two marriages of Valentinian with Severa and with Justina were *successively* contracted, and that he used the ancient permission of divorce, which was still allowed by the laws, though it was condemned by the Church.

Valentinian, at any rate, did issue decrees about divorce, and so, too, did those greater Emperors, Constantine, Theodosius and Justinian. Though they issued them under the influence of the Christian clergy, their object was not to abolish or forbid divorce, but to restrict or regulate it ; and some of their decrees were of a very liberal, not to say a very loose, description. Justinian, for example, allowed a husband to divorce his wife, not only for adultery, but also for "going to dinners or dances with other men", and for "going to the theatre without his permission" : a regulation quite in line with that old Roman Law which allowed a man to divorce his wife for drinking a glass of wine, or the Hebrew provision that he might do so because she was an incompetent cook.

The details of this legislation, however, need not detain us. The one fact which may usefully be noted is that these early divorce laws of the Christianized Roman Empire were frequently repealed, generally ignored, and uniformly broken. The time soon came when any of them which still remained nominally in force applied only to the Byzantine Empire, the Roman Empire having disappeared, overwhelmed by the barbarian invaders.

Byzantium then ceased to recognize the spiritual

authority of the Bishop of Rome; and there was a long period during which, even in the Western world, the spiritual supremacy which the Bishop of Rome claimed was by no means universally admitted. Indeed, it was not until the famous Papacy of Gregory the Great—he was Pope from 1073 till 1085—that, as Professor Davis put it in his useful little book, *Mediæval Europe*, "the primacy of Western Christendom assumed a new character", with the result that "Rome became and remained the religious metropolis of Europe".

The long story of the slow rise of the Papacy to that unchallenged position must be studied in other works; but there are certain points about it which it is desirable to note here. The first is that the power to "bind and loose", in this matter of the divorce laws, as in other matters, which Catholic theologians claim to be inherent in the Papacy, was not universally admitted, and did not become effective through the Christian world until more than a thousand years after the death of Christ. The second is that, though it had always been the tendency of the Bishops of Rome to favour and proclaim the rigid view that marriage, being a Sacrament, was indissoluble, divorce, throughout this period, was not at all uncommon, and was sanctioned by several provincial synods.

That was not unnatural. The barbarian invaders brought their own marriage customs with them. They, like the Romans, were accustomed to divorce, and attached importance to it. Murder, magic and the rifling of tombs, for instance, were grounds on which an Ostrogothic wife could divorce her husband. The Visigoths permitted her to do so for unnatural vice. Among the Lombards she could do so if her husband pressed her to become a

prostitute, or to receive prostitutes in her house. The Burgundians had a law which allowed a husband to pitch an unfaithful wife into a pond. The Alemanni and the Franks were disposed to insist upon divorce by mutual consent. The early synods could not possibly ignore these requirements; and Mr. Joseph McCabe has produced a most instructive compilation of their rulings.

He shows us the Synod of Languedoc, for instance, decreeing the excommunication of men who divorced their wives "without grave cause"—a decree which obviously implied that they might divorce them if the cause were grave. He also shows us the Synod of Soissons deciding that a wife's adultery gave ground for divorce, and the Synod of Compiègne allowing either a husband or a wife to contract a fresh marriage if the other entered a monastery or became a leper. There are many other similar rulings which could be quoted if required; and there is evidence that even the views of the Popes themselves were subject to fluctuations. Pope Gregory II, for example, first told the Germans that both divorce and re-marriage were forbidden, but subsequently wrote to Saint Boniface, who was working among them as a missionary:

"You ask what a woman's husband must do if she fall ill and is unable to render her duty. It would be well if the man could remain as he is and cultivate abstinence. This, however, is a difficult task, and it is therefore permissible for a man to marry if he cannot be continent; but he must not cease to support her whom infirmity alone, and not some abominable sin, hinders from doing her duty."

That is a very important ruling. It proves—if further proof be needed—that divorce, far from being strictly and unconditionally forbidden from

the first by the organized Christian Church, was a proceeding the permissibility of which continued to be debated for a period substantially longer than that during which the full authority of the Church of Rome has formally and definitely placed its ban on it.

Rome, it must be insisted, was not yet, during that period, in the full sense of the words, the Head of the Western Church. Or, at all events, her supremacy, though often claimed, was not always and everywhere admitted. For a long time, indeed, the position of the Bishop of Rome was only that, so to say, of an Elder Statesman among bishops: one who, though, as a rule, he was respectfully consulted and deferred to, might also be, and not infrequently was, ignored and defied.

The Popes went on, however, from strength to strength. Their position in the religious world was gradually improved by the weakness of their rivals. It was immensely strengthened when Charlemagne drove his famous bargain with the Pope, giving him, and protecting him in, a temporal kingdom in Italy on the understanding that the Pope should crown him as Roman Emperor. It reached its zenith when Hildebrand became Pope as Gregory VII.

"Gregory VII," Davis writes, in the work already quoted, "conceived of Christendom as an undivided State; of a State as a polity dominated by a Sovereign; of a Sovereign as a ruler who must be either absolute or useless. And who, he asked, but the heir of the Prince of the Apostles, could presume to claim a power so stupendous?"

That was in 1073—more than a thousand years after the death of Christ; but from that date until the Reformation Rome counted as it had never

counted before. Opposition was extinguished; heresies were crushed—sometimes, as in the case of the Albigenses, with barbarous violence. Thenceforward, throughout Western Christendom, in theory, if not always in practice, the word of Rome about divorce was law. The dogmas of Rome, in this as in other matters, were the only dogmas which anyone took seriously.

It took time, no doubt, for those dogmas, whether they concerned divorce or marriage, to grow, and to be fully consolidated and definitely formulated; but the modifications introduced into them after the time of Gregory the Great are minor modifications of little importance. They conflict, as will be seen, not only in the prohibitions which they impose, but also in the latitude which they allow, with the present law and custom of almost all civilized countries. They date, in their present form, from that Council of Trent which defined Catholic doctrine at the time of the Counter-Reformation; and the best way of presenting the position which the Catholic Church now holds and defends will be to summarize the evidence given before the Royal Commission by Monsignor Moyes, Canon of the Archdiocese of Westminster, and a prelate of the Roman Court, whom the Archbishop of Westminster appointed to attend on behalf of the Church.

Marriage, we gather from that evidence, is, when both husband and wife are Christians, a Sacrament, and, therefore, indissoluble; and by a Christian the Catholic Church understands anyone who, whether he professes and calls himself a Christian or not, has been baptized. But it is only to the marriages of Christians, celebrated in accordance with Christian law with Christian rites, that this

law applies. A marriage between Jews, or between a Christian and a non-Christian—except in the cases in which the Pope's dispensation for the latter has been granted—is not, in the eyes of the Church, a marriage at all, but only an adulterous association. The Church knows of no religious reason—and it has no concern with any others—why Jews should not dissolve their marriages at any time on any grounds which seem sufficient and satisfactory to them; and it holds that a marriage between a Jew and a baptized Christian is "dissoluble not merely for adultery but simply for desiring not to live with the other party".

Certain marriages between Christians, however, are, in the eyes of the Church, invalid. Which of them are valid and which of them are invalid is a matter for the Church to decide. The Church cannot dissolve a marriage, but it can nullify it—can declare, that is to say, for any one of fifteen carefully specified reasons, that no real marriage, valid in the eyes of the Church, has been concluded, and so set both husband and wife free to seek other partners.

Some of the grounds on which the Church can make such a declaration—impotence or insanity at the time of the marriage, for example—are grounds on which a decree of nullity can also be obtained in an English Court. Others are not; for the Roman Catholic Church can, and sometimes does, pronounce a marriage invalid because one of the partners was not a Christian or was not a consenting party to the marriage, but married under parental pressure, or was bound to some other person by a prior contract. The Church, too, has its own "list of forbidden degrees" which, as Andrew Lang wrote, in his *Ballade of Primitive Man*, "an extensive

morality shows" and is more extensive than that of any other Church or any secular code. Marriages within those degrees are regarded as null unless specifically permitted by Papal dispensation.

For the power to "bind and loose" in the matter of marriage which the Pope claims goes far. He can, and sometimes does, validate what most of us would regard as an incestuous marriage—a marriage, for instance, between an uncle and his niece. He granted a dispensation for such a marriage, in quite recent times, to a Duke of Aosta. On the other hand, if a man marries his third cousin, without a Papal dispensation—even though he was, as of course he easily might be, quite unaware of his relationship to her—that marriage can be upset if the relationship is subsequently discovered and a demand for its nullification is laid before the Ecclesiastical Court appointed to hear such cases.

These are provisions which most of us find it difficult to reconcile with our moral standards; and Monsignor Moyes candidly admitted, when the point was put to him, that this conflict between the law of the Church and the law of the land might entail and, indeed, naturally would entail, consequences which, whether they redounded to the greater glory of the Church or not, the natural man would regard as distressing and deplorable.

Cases—such cases as might easily occur—were put to him.

The first case on which his opinion was sought was that of a Roman Catholic husband who obtains from a Civil Court a divorce from an unfaithful wife and then avails himself of his legal right to marry another woman. How, he was asked, would his Church regard such a man's action, and what steps, if any, would it take? His answer was that

the Church would regard the man as a sinner, would refuse him absolution, and would exclude him from the Holy Communion; but that absolution would be given, and sacramental privileges would be restored, if he repented, declared himself ready to return to the woman who had injured him and gave an undertaking "not to live with or cohabit with" the woman to whom he was legally married and who had never done him any wrong.

There are people to whom this injustice will not seem any the less unjust because it has the authority of a Church behind it, but a reason, rather, for raising the question whether the views of a Church which applauds it are at all worthy of consideration.

The second case presented was that of a man to whom the Church of Rome has accorded a declaration of nullity on grounds not recognized by the law of England—because, for instance, his wife had not been baptized as a Christian—and had married another woman. What view, Monsignor Moyes was asked, would the Church take of that man's conduct? Would it, or would it not, regard him as a bigamist?

The Church, he replied, would neither censure him for nor even "discourage" him from contracting his bigamous marriage. It would regard the law which forbade a bigamy of that sort as one "entrammelling the law of Christ". It would regard the wife whom the man had bigamously married as his real wife and the children borne to him by the legal wife whom he had abandoned because her religion differed from his as illegitimate.

Careful note should be taken of the admissions thus extracted by cross-examination.

They are official admissions. There is no getting

away from them—or from any of the deductions which logically follow from them—for the excellent reason that Monsignor Moyes appeared before the Royal Commission, not as an irresponsible Roman Catholic freelance, but as the person specially selected by the Cardinal Archbishop of Westminster to attend and give evidence on behalf of the Church of Rome. And those deductions, which really amount to little more than re-statements, will startle those people who have never made any close study of the Roman Catholic marriage laws. For we find ourselves irresistibly compelled to infer that, according to the law of the Church of Rome:

1. Popes have an absolute right to sanction incest, and have been known to do so at the request of important and influential people.

2. Bigamy is permissible, at any time, without even the need of a Papal dispensation, to any Christian who has married a non-Christian.

3. There are cases, not admitted by the civil law of any civilized country, in which it is both the right and the duty of a husband to repudiate the wife to whom he is legally married, and, in such a case, the children whom the law treats as legitimate are regarded by the Church as bastards.

It may be added that it is also, in the view of the Church of Rome, right and proper for a man to desert his wife, leaving her unprovided for, in order to become a monk.

We need not criticize these propositions. It suffices to state them, though it was desirable to state them crudely in order that their significance might be appreciated. Roman Catholics may, and presumably will, defend them; but they cannot repudiate them without ceasing to be Roman Catholics. One has only to read them, with a full

perception of their meaning, in order to understand how it was that, as the Majority Report of the Royal Commission sets forth, the only witnesses called with whom clerical opinion appeared to carry weight were the clerical witnesses ; the others—the lawyers, the magistrates, the doctors, the Court missionaries, etc.—being satisfied to approach the subject from the points of view of common sense and public convenience.

It should be noted, however, that this attitude of indifference to or revolt against clerical authority is a relatively new feature of the controversy. All through the dark night of the Middle Ages, that authority was accepted as supreme. For a long time afterwards it was at least treated with consideration and respect ; and our next task must, therefore, be to enquire how, in those days, it worked in practice, how, and to what extent, kings and other influential and important people evaded it when they found it embarrassing, and in what circumstances, and with what success, public opinion eventually challenged it.

CHAPTER VI

How Catholic practice differed from Catholic theory—Marriages, in theory Indissoluble, Dissolved in Practice, by Declarations of Nullity—List of Kings and Emperors to whom the Pope granted such Decrees—Commercial Travellers sent out to sell Decrees of Nullity.

It will be no news to any reader that, in the Dark Ages, Papal practices were not always in full accord with Papal theories.

There was a good deal of human nature in the Popes. They felt that they must think of themselves as well as their flocks. Even when they were very good men—and there were Popes to whom that flattering description would be inapplicable—they felt the need of accommodating their policy to the caprices of powerful kings on whose favour and patronage the maintenance of their dignity, if not of their religion, depended.

That meant that they had to walk warily in this matter of divorce; for not the least frequent of the caprices of these powerful kings was the desire to get rid of an old wife and take a new one.

Many kings in those days were either afraid or reluctant to do this without the Pope's leave, but were, at the same time, quite capable of defying the Pope if he refused to sanction the change, and of making it well worth his while to sanction it, to find reasons for treating their cases as exceptional, or to put his ecclesiastical telescope to his blind eye when they desired to commit offences which, in the

case of humbler persons, he would not hesitate to stigmatize as fornication or adultery.

That is how the principle came to be established that, though the marriage law of the Church, being the law of Christ, must on no account be altered, there was no reason why Christ's Vicar should not allow and assist any potentate whom he wished to oblige to drive a coach and four through it. A typical case in which that was done—the most notable of the typical cases—was that of the Emperor Charlemagne.

Charlemagne was the most powerful sovereign of his age. Pope Adrian I was under great obligations to him. He had protected the Pope against the Lombards and given him his temporal kingdom. Whatever his sins—and they were unquestionably both numerous and grave—it would have been difficult for the Pope to treat so great a benefactor as the chief of sinners ; and he did not.

He condoned Charlemagne's sins. He even, as will appear in a moment, suggested some of them ; and he eventually added the sinner's name to the list of the saints. The story is too long a one to be told in detail ; but this is how the part of it which is relevant to our purpose is summed up in the petition for the reform of the French divorce laws which Dr. Arsène Drouet addressed to the French Parliament in 1876.

Charlemagne was divorced several times. In 770, at the wish of his mother, Bertrade, Charlemagne married Ermengarde, daughter of Didier, King of the Lombards, in order to unite in a perpetual peace the two peoples which then respectively dominated Italy and France. But, after having contracted this marriage, Charlemagne was obliged to dissolve it at the instigation of Pope Stephen III.

This Pope's reason for pressing Charlemagne to dissolve

his marriage was that he preferred the protection of a prince who lived at a distance from him to his continual exposure to violence at the hands of a sovereign whose kingdom was nearer to Rome. Moreover, he could not hope to become definitely master of Rome if he did not effectively help in arming France for the destruction of the Lombard monarchy. Ermengarde, therefore, was repudiated, in the presence of French bishops, on the pretext that she was diseased and barren.

Charlemagne, whom a historian has described as "a little inclined to be too fond of women", married nine times, had several mistresses, and was even intimate with his daughters. He was canonized.

It cannot be maintained that either the Pope or the Emperor comes very well out of that story. It would, indeed, be hard to say which of them comes out of it worse. But there is no need to moralize. The important point—very important to our argument—which it establishes beyond the possibility of question is this: that nearly eight hundred years after the death of Christ the dogma of the indissolubility of marriage on which we have seen Monsignor Moyes insisting, though frequently affirmed, was not yet universally accepted, and that permission to disregard or evade it depended, in the case of the great, not upon any rigidly fixed ecclesiastical laws, but on the will, or convenience, of the Supreme Pontiff.

And it must be added that the Supreme Pontiff, on whose will or convenience such decisions depended, was often, in the Dark Ages, a very unworthy successor of the Apostles and a man whose tenure of the sacred office and inheritance of apostolic grace by no means prevented him from living a licentious life. If anyone doubts that fact, let him read this:

Stephen VI had the putrefying body of a predecessor raised from the grave, submitted to a ghastly mockery of a

trial, and cast into the Tiber. A succeeding Pope, Sergius III, murdered two of his immediate predecessors, and lived in criminal intimacy with Marozia, one of the loosest women among the licentious Roman nobility of the time. Pope John X was the lover of Marozia's mother, Theodora, who shared her daughter's reputation and he is said to have been murdered in prison at the order of Marozia. Pope John XI was the illegitimate son of that notorious adventuress and of Pope Sergius. Pope John XII, the illegitimate son of Count Alberic, far surpassed his predecessors in license of conduct ; but a later Pope, Benedict IX, crowned the series by enlivening the Papal Palace with crimes and vices that Rome had not seen since the days of Nero.

So Mr. Joseph McCabe wrote in his work on divorce. Those who read his illuminating précis of Papal iniquities may well need all the comfort to be derived from the Article of Religion concerning "the unworthiness of the Ministers which hinders not the efficacy of the Sacrament", though they may also deplore the neglect of the injunction in that Article that "enquiry be made of evil Ministers, and that they be accused by those that have knowledge of their offences, and finally being found guilty, by just judgment be deposed." The summary has, of course, no direct bearing on the Roman Catholic law of divorce ; but it does, at least, leave one wondering whether all Papal rulings on the subject were of equal value, or can reasonably be supposed to have been, as the Roman Catholic Church claims that all Catholic rulings, pronounced *ex cathedra*, always are, either actually or potentially inspired by Divine direction.

That question, however, though raised, need not be argued. All that it is now necessary to point out is that, if they were so inspired, then Divine inspiration has guided different Popes, as it had previously

guided different Evangelists, to different conclusions, that the human means through which the Divine grace has worked have generally been threats and bribes, and that the present Catholic teaching on the subject, as expounded by Monsignor Moyes, is not the Church's original, unaltered and unalterable interpretation of the words of Christ, but an interpretation which it took the Church several hundred years to agree upon and formulate. Throughout those many hundred years its precepts, as well as its practices, were variable and chaotic; and it was not until the time of the Council of Trent, already referred to but still requiring further mention, that the Church can be said to have made up its mind, and declared its policy fully and finally on the matter.

For the story of the divorce of the Emperor Charlemagne does not stand alone. Other divorces preceded and followed it. It is preceded by the story of the divorce of Charles Martel, the Christian King of France who saved Europe from the infidel by defeating the Saracens at the famous battle of Tours in 732. It is followed by the stories of the two Holy Roman Emperors, Henry the Fowler and Henry III; and even after the fiery monk, Hildebrand, having become Pope Gregory VII, had undertaken the herculean task of cleansing the Augean stables of the Church, it was only by degrees that the doctrine defined with such admirable lucidity by Monsignor Moyes assumed its ultimate shape.

Perhaps the problem was in some ways simpler in those Dark Ages than it is now. Love, as we moderns understand the word, did not complicate it. What Charlemagne, for instance, thought of love, may be gauged by various stories. "Some day," he said to a friend of his, "one of my feudal

lords will die, and then I will give you his lands and his wife too if you care to have her"; and when an immense number of his feudal lords fell in battle against the infidel in Spain, he married all their widows, without delay, to other men.

Modern love, indeed, seems to have come into the modern world as a premonitory symptom of the eventual revolt of woman. What passed, at first, for love with men was only lust, quite unsoftened by any tender sentiment. The modern note seems to be struck, for the first time in modern literature, in the *Chanson de Roland;* and it is in connection with a woman's love that it is sounded. The scene is at Aix, whither Charlemagne had retired after that battle in the Pyrenees in which Roland had fallen; and we read:

> Lo, there comes to him one Aude, a beautiful young woman, and she says to the King: "Where is Roland, the Captain, who swore that he would make me his wife?" Charles, in grief and pain, weeps and tugs at his white beard. "Sister, and dear friend," he says, "he about whom you question me is dead, but I will give you another good husband intead of him, my son Louis, who will follow in my steps." But Aude replies: "I pray God and His saints and His angels that I may no longer live now that Roland is dead." She then turns pale and falls dead at Charlemagne's feet. May God have mercy on her soul. The French barons weep and pity her.

The story, irrelevant as it is, has its use as an indication of the atmosphere in which the Popes of the Middle Ages laid down the divorce laws and released from their marriage vows those great men whom they thought it unwise to offend.

The tendency, no doubt, was towards increased rigidity and the view, ultimately adopted, that, though marriages could, for a constantly increasing number of reasons, be annulled, they could not

be dissolved; but there were many set-backs in the progress of the Church toward that view, and, in the period which intervened between the Papacy of Gregory VII and the Council of Trent, some very interesting divorces (or declarations of nullity if that term be preferred) took place. Alexandre Dumas *fils*, in the pamphlet entitled *La Question du Divorce*, which he published in support of the Loi Naquet, tells us something about some of them:

Louis VII, King of France, took with him to the East, in 1147, his wife Eleanor of Aquitaine, who had borne him two children. He thought he had grounds of complaint against her; and, indeed, most of the French nobles whose wives had accompanied them to Palestine had reason to complain of the conduct of these ladies. Saladin had made a great impression upon Eleanor; and love affairs worse than heretical occurred between other French ladies and these Turkish infidels. So it came about that, after his return to France, Louis VII asked for a divorce and obtained one from the Pope in 1152, though it was nominally a declaration of nullity on the ground of forbidden and incestuous relationship, consisting in the fact that Hugues Capet, Louis VII's grandfather, had married a sister of Eleanor's great-great-grandfather, Guilhelm Fierabras.

Eleanor, after various adventures, married as her second husband, Henry Plantagenet,* the young sovereign ruling over Normandy and Anjou, who was fifteen years her junior; while Louis VII, on his part, married Constance, daughter of Alfonso VII, King of Leon and Castille.

"Here, then, we see divorce and second marriage while both the divorced parties are still alive, duly authorized by formulæ of purely nominal value. The invocation of forbidden degrees in this case had no authority except that necessity which is above the law in human, and sometimes in religious affairs, seeing that, at the beginning of the thirteenth century, Innocent III was to take exactly the opposite line and sanction the marriage of Berengaria, daughter of the King of Castille, to Alfonso, King of Galicia and Leon, who was her first cousin.

* Henry II of England.

A few years later, however, this same Pope dissolved the marriage on account, it is said, of the queen's bad behaviour. They had had children, and Berengaria was compelled to take the veil at Burgos. This time, there was no mention of forbidden degrees, and Pope Innocent III allowed the divorce simply and solely on account of the wife's adultery.

Here are two other cases mentioned in the same work:

Vladislas, King of Bohemia, marries Beatrice of Aragon, Queen of Hungary, in order to be able to wear the crowns of both countries. That done, he repudiates the Queen, although the marriage has been duly consummated, and obtains the Pope's permission to marry again. The Pope in question was the notorious Alexander VI.

This same Alexander VI sold to Louis XII, King of France, permission to repudiate his wife, Jeanne of France, daughter of Louis XI, and sister of Charles VIII, "in spite of the fact", as Brantôme writes, "that they had been married and had slept together for quite a long time". The King obtained from the Pope permission to marry Anne of Brittany, widow of Charles VIII, who had been his mistress for several years. It is true that Louis XII swore that he had never been intimate with his wife, Jeanne of Valois, but, Brantôme proceeds, "oaths of this sort are often fraudulent and very difficult to believe". The favour won Cæsar Borgia, Pope Alexander VI's son, who was then a Cardinal, great advantages in France and the promise of several States which Louis XII, who was called the Father of his People, undertook to conquer for him in Italy, at the cost of the lives of a considerable number of his subjects.

These are, perhaps, the most flagrant cases discoverable in which Popes obviously, and almost openly, consulted their temporal interests in the exercise of their spiritual power, at that time generally admitted in Christendom, to bind or loose the Christian Kings and Queens. A long list of similar cases, including those of Frederick Barbarossa, who encountered no iusuperable Papal

objection when he divorced Adelaide of Vorburg, in order to marry Beatrice of Burgundy, and of William, son of Robert of Normandy, whose marriage to Sibyl of Anjou was annulled, at the request of our own Henry I, on the ground that husband and wife were fifth cousins, could easily be compiled, though it would make tedious reading.

Nor must it be discredited because it is taken from the pages of an anti-clerical writer; for we find the condition of things which they illustrate thus summarized by a clerical witness—Canon Hensley Henson—before the Royal Commission:

"It is, of course, well known that, throughout the later mediæval period, the law of the Western Church prohibited divorce; but then, that prohibitive law was conditioned by so large and liberal a system of dispensations, and admitted such strange applications of the doctrine of nullity, that, in practice, marriages were cancelled with scandalous frequency, and the law of the Church, in spite of its theoretical severity, appeared, in the judgment of serious men, to have become a potent influence of moral confusion and laxity. . . .

"The impediments to matrimony grew in a marvellous degree. Blood relationship was carried to four degrees of consanguinity—at one time to seven—but this was found intolerable. Affinity was regarded as an equal bar. Sponsorship was a spiritual relationship. . . . The confusion was endless. These restrictions had their origin in a useful sentiment, but they were extended by perverse ingenuity till the marriage law had been truly called a maze of flighty fancies and misapplied logic. And I fear it must be admitted that this process was acquiesced in because it opened a door for divorce.

"Marriage was a sacrament, matrimony was indissoluble. But a good many people wished to dissolve it, and a means for this purpose was discovered by fencing round matrimony with so many pretensions that it was really doubtful if any one was really married at all."

The last two paragraphs are a quotation taken by Canon Hensley Henson from the late Bishop Creighton's work on *The Church and the Nation*. The Bishop and the dramatist speak almost with a single voice, though, perhaps in a different tone of voice; so, with the facts thus firmly established, we may proceed to take stock of the position.

It cannot be exactly defined. We shall not see it stabilized until we come to the Council of Trent. The period over which the stories which Dumas *fils* told and Bishop Creighton and Canon Hensley Henson had before them are scattered over a period of several hundred years during which things were in a constant state of flux. But a few generalizations can be added to those of Bishop Creighton. One can state the problem, explain the necessity for compromise, and show how compromise was effected by methods which not only increased the Pope's authority, but also replenished his treasury.

The problem itself was a perfectly simple one. What had to be done was to reconcile principles laid down by such celibate fanatics as were described in the chapter on the Early Fathers with what some people call the weakness and others the lusts of other people's flesh. This reconciliation could not be effected without concessions; and when the concessions were demanded, at the point of the sword, by princes powerful enough to defy the Papacy and upset the Pope, it was necessary to grant them. Otherwise the Pope would have been

upset and the Christian world would have been disturbed by heresies and rent by schisms. At the same time, it was desirable that the according of the concessions, though it might, in fact, be arbitrary and corrupt, should, at least, be judicial in form and appearance. Otherwise the Papacy would be brought into contempt.

We can see what that meant: that there must be rules, whether those rules were quite rigidly observed or not.

The Pope must figure before the world, not as a spiritual despot who could dispense with rules or over-ride them, but as a supreme arbitrator who not only knew the rules better than anybody else, but had been given Divine authority to interpret and apply them. But his convenience—and the convenience of those important people whose imperious wishes he had to consider—required those rules to be extensive and lax, so that the interpretation of them which policy dictated could always be given without any apparent abandonment of any principle.

It had become common ground—though it had taken several hundred years to become so—that marriage, being a sacrament, was indissoluble. It was also common ground—as, of course, it always had been—that concubinage, not being a sacrament, was dissoluble. These points agreed upon, the Church, pressed, as it continually was, by princes who were tired of their wives and wanted new ones, faced the questions upon which its ultimate attitude in the matter of divorce was to hinge.

When is a marriage not a marriage? What were the conditions precedent essential to the validity of a marriage? In what circumstances, and in compliance with what principles, was it open to

the Head of the Church, in whom supreme authority was admittedly vested, not, indeed, to dissolve the marriage, but to declare that there was no marriage to be dissolved—that the alleged wife was only a concubine who might, at any time, be told to depart in peace, and that both she and her alleged husband would then be free to contract other unions ?

The answers to these questions at which the Papacy finally arrived have already been set forth in the summary given of Monsignor Moyes' most instructive deposition ; but it must be noted that the Canon Law which now determines them was a law of gradual growth, modified, from time to time, as the sequel, in some cases, of very fierce controversy. There was a time when a violent dispute raged over the question whether the consummation of a marriage was a necessary condition of its indissolubility. It was not until the year 1215 that the Church definitely reached the conclusion that marriages between third cousins were invalid, and not until a still later date that it was decided that godparents must be reckoned with parents in the determination of this relationship.

It was all very confusing ; but there were people to whom the confusion was very convenient. The ecclesiastical lawyers had sharp wits. The ecclesiastical courts were not bound by the strict rules of evidence which govern procedure in our own courts, but could always, if they chose, accept an *ex parte* statement as a proof. Consequently, while it was always possible for the Pope to waive any rule and dispose of any impediment to a marriage which would otherwise have been invalid by granting a dispensation for it, it was equally possible for him, when the dissolution of a marriage was sought, to give any ruling which expediency dictated without

any discoverable departure from the strict letter of the law.

That gives us, in rough outline, the condition of things in the three hundred years or so which preceded the Reformation; but there was a further complication which gradually assumed importance.

The time came when money spoke.

It cost a great deal of money to maintain the Vicar of Christ in the pomp and splendour which he thought proper to his proud position; and money was scarce. Unless economy was to be practised—and that solution of the problem does not seem to have occurred to anybody—new ways of raising money had to be devised; and resourceful pontiffs presently realized that both Papal dispensations over-riding impediments to marriage and Papal decrees of nullity of marriage were marketable commodities for which there was a large actual and a still larger potential demand, and that if a means could be found of making the potential demand actual, wealth beyond the dreams of avarice would be at their disposal.

So, just as they had sold indulgences, they took to selling dispensations and decrees of nullity; and in that way the further principle was established that there was no harm whatever in divorce provided that it was called nullity, that it was obtained by subterfuges and false pretences, and that the Pope made money out of it.

And then there came yet another very important development—a development designed to bring divorce, under the name of nullity, within the reach of all, to the greater glory of the Church.

There were poor people, as well as rich people, who wanted impediments removed or marriages annulled. Not all of them could afford the expense

of travelling to Rome, and presenting their cases there; but vast numbers of the people who desired these privileges were able to pay something for them, and would be willing to do so, if invited by pushing ecclesiastical salesmen.

The experiment was therefore tried.

Commercial travellers were sent out all over Christendom to inform all and sundry that the Pope was willing, for a consideration, to declare that their wives were only their concubines, and to arrange the fees for which they might have either dispensations or decrees of nullity granted in their own parishes; and this traffic, together with that in the indulgences, became so brisk that the profits are said to have been sufficient to pay for the building of the Papal Palace at Avignon.

Such was the condition of things in Europe when the ferment of the Reformation began to stir.

CHAPTER VII

Moral condition of the Church on the Eve of the Reformation —Monasteries "worse than brothels"—Loose Women at the Council of Constance—Attitude towards Divorce of Luther and other Reformers.

At the time of the Reformation it would have been true to say that the marriage laws of Western Christendom had been devised by fanatical ascetics but were being administered by time-servers and backsliders. After the Reformation it would have been equally true to say that the efforts of the Reformers, though directed to making divorce easier, had, in fact, made it more difficult.

No doubt there were, all through the Middle Ages, some ecclesiastics who followed the austere example of the Early Fathers. The great Hildebrand, for one, followed it so conscientiously that some students of his career have suggested that he probably was impotent.* But the great Hildebrand was an exception; and there is abundant evidence to show that the majority of the ecclesiastics of that period were much better at preaching ascetisism than at practising it; and that statement is equally true of Popes and monks and parish priests.

Many of the early Popes were the fathers, in a literal sense, of many of their flock. There were Popes for whose delectation naked women danced lascivious dances in the Vatican. Many of the monasteries were, Erasmus assures us, in the days

* Mr. Joseph McCabe makes this suggestion.

immediately preceding the Reformation, "worse than brothels". We get the same impression from Charles Reade's vivid historical novel, *The Cloister and the Hearth*; and it is credibly stated that as many as one thousand loose women presented themselves at the Council of Constance for the purpose of offering the pleasures of immorality to the ecclesiastics who were about to burn John Huss at the stake.

These facts are important. Our estimate of the deference due to those marriage laws of the Church which the Reformers were to attack cannot be entirely unaffected by all this overwhelming evidence that, having originated with celibates who regarded celibacy as a nobler state than marriage, they were being applied, with modifications, by celibates who systematically ignored their vows of chastity. The Reformers themselves were unquestionably influenced by it.

They seem to have been, in the main, honest and decent men with strong passions which it seemed to them indecent to indulge secretly. The profiteering in indulgences to which their revolt against Papal authority is commonly attributed, was only one of many abuses to which they objected. The compulsory celibacy of the clergy, ordained by the apostolic successors of a married man—for Saint Peter was no celibate—seemed to them equally objectionable. They attacked it with equal indignation: some of them, like Martin Luther, because they wanted to marry, and others, like Erasmus, who seems to have taken a purely impersonal view of the matter, because they perceived that the prohibition was detrimental to morality.

"There are priests," Erasmus wrote, "now in vast numbers, enormous herds of them, seculars and

regulars, and it is notorious that very few of them are chaste. The great proportion of them fall into lust and incest, and open profligacy. It would surely be better if those who cannot contain should be allowed lawful wives of their own, and so escape this foul and miserable pollution. In the world we live in the celibates are many and the chaste are few. A man is not chaste who abstains only because the law commands him, and such of our modern clergy as keep themselves out of mischief do it more from fear of the law than of conscience".

That quotation, however, is introduced only as an indication of the atmosphere in which the Reformers set to work to reform the divorce laws—an atmosphere which may well have seemed favourable to thorough-going reform.

Erasmus approached the subject as a scholar, contemptuous of humbug and hypocrisy; Luther as a robust and impatient man who had no use for asceticism and saw no reason why the devout should not serve God with flagons of wine beside them and young women seated on their knees. At all events his Catholic opponents depict him as that sort of man; and their view of him derives some support from the story of his romantic marriage.

There were nuns in those days who were quite as tired of their celibacy as the monks, but had not the monks' opportunities of mitigating it. Some of them, though they had no vocation whatever for the religious life, had been packed off to convents, against their will, by parents who wanted to get rid of them. Their nunneries were, for them, prisons from which they desired to escape; and in one of the nunneries the nuns decided, at a mass meeting held in one of the cells, to send a message to Martin Luther asking him to help them.

And Martin Luther was quite willing, and embarked upon the adventure in high spirits.

Men, of course, could not easily obtain access to the convent; but there was one man who was always welcome there—the drayman who delivered the beer and carted away the empty barrels. One day, when this drayman issued forth from the convent gate, there was, as he had arranged with Martin Luther that there should be, a nun concealed in each one of the barrels supposed to be empty. As soon as they were in the forest, beyond the Lady Superior's range of vision, the covers of the barrels were removed, their merry heads popped up, and they got out and walked.

In due course, after a long journey, the drayman delivered them to Martin Luther, who not only arranged for them to live as the paying guests of the leading citizens, but fell in love with one of them—Katherine von Bora, who had taken the chair at the meeting of the rebels—and married her, and lived happily with her for the remainder of his days.

That is, perhaps, the most romantic story told of any of the Reformers. The hero of it may well have felt that he was the right man in the right place when he attacked the Church's marriage laws; and he did attack, with great vehemence and vigour, the contention that, in this matter of marriage, God had given the Pope the right, not only to bind and loose, but also to make a profit on both transactions. Here are his fierce words on this branch of the subject: "What shall we say of those impious human laws by which this divinely appointed manner of life has been entangled and tossed up and down? Good God! It is horrible to look upon the temerity of the tyrants of Rome who thus, according to their

caprices, at one time annul marriages and at another time enforce them. Is the human race given over to their caprice for nothing but to be mocked and abused in every way, and that these men may do what they please with it for the sake of their own fatal gains? And what do they sell? The shame of men and women, a merchandize worthy of these traffickers, who surpass all that is most sordid and most disgusting in their avarice and impiety."

That is strong language; but its violence will not seem exaggerated to any one who remembers that, in Luther's lifetime, one Pope gave King Henry VIII permission to marry his deceased brother's widow, and another wrote—or instructed his secretary to write on his behalf—that he was not at all indisposed to sanction a marriage between King Henry's illegitimate son and his legitimate daughter. It gives one the impression of a Reformer who really meant business; but, as a matter of fact, the door through which reason and common sense were eventually to enter, though ajar, had been opened only a very little way.

The revolt of the Reformers against the tyranny of Rome resulted only, and was intended to result only, in a change of masters. For the authority of an infallible Church they substituted the authority of an infallible Bible interpreted by fallible divines; and we see the practical effect of the substitution in the story—cited by Catholic historians of the Reformation—of the reply sent by Luther and other eminent Reformers to Philip Melanchthon, when he asked them to give evangelical approval to his desire to commit bigamy. Fair play to the Roman Catholics certainly demands that that story should be told.

Philip was unhappily married. His wife—or

so he said—had taken to drink. He was living on such terms with that drunken lady that he could no longer partake of the Lord's Supper in a proper spirit and with a tranquil mind. He had every reason to expect that he would once more be able to do so if only he could marry Margarethe von der Saal, with whom he was in love. If he had not broken with the Church of Rome, he would have had no difficulty in obtaining the dispensations which he desired. He had broken with it, however, and he did not propose to return to it even for the purpose of putting his love affairs on a pleasant basis favourable to piety. What view did the Reformers take of his hard case ?

They took a very queer view of it.

Though the Gospel, they said, had not expressly forbidden bigamy, it was, as a general rule, the duty of pastors to discourage and denounce it ; but they might, nevertheless, in individual cases of the direst need, and to prevent worse, sanction it, and a marriage so sanctioned (the necessity for it being proved) was a true marriage in the sight of God. It was, however, an illegal marriage, and should, for that reason, be kept secret, the dispensation given for it being kept under the seal of the confessional. If it should become known, then the dispensation would be invalid, and the union would be one of mere concubinage.

It is a very remarkable—a very casuistical—pronouncement : an anticipation, in the very earliest days of Protestantism, of Milton's bitter saying that new presbyter was only old priest writ large. Luther and the other Reformers were clearly assuming the right to grant, in a shuffling and surreptitious way, the very dispensations which they had denounced the Pope for granting ; and the only excuse which

can be made for them—or which they could have made for themselves—is that they were prepared to grant them gratuitously, whereas the Pope had only granted them for money or for some other valuable consideration.

So we see the Reformers establishing themselves, as it were, in a half-way house; and we may pause to see exactly what progress they had made and what new ground they had broken.

They had got away from the Roman Catholic conception of marriage as a sacrament, and the consequent view that the validity and dissolubility of marriages were matters in which the State must always bow to the authority of the Church; but they had abandoned it only because the Church had abused its powers; and they were quite as far removed as the Church from the view that marriage was a civil contract which could be dissolved on terms agreeable to the persons concerned. They wanted to transfer the powers of the Church to the State; but they wanted the State to exercise its powers on lines determined by divines; and they thought of divorce, not as a civil remedy for a civil wrong, but as a punishment for a criminal offence.

Duty was all-important to them; love did not count. Their view, apparently, was that expounded by Dr. Hensley Henson who, when the Royal Commission sought his views as to whether the disappearance of love was a reason for allowing divorce, replied: "Certainly not, because the Church's attitude is that you ought to love one another, and that your loveless condition is quite within your power to remedy"—a response from which most people will infer that love is a subject of which the Bishop of Durham has not yet made an intensive study. That attitude of theirs certainly

seems to be implied in the fact that, as Mr. H. B. Kitchin tells us, in his *History of Divorce :*

> Private separations were reprobated and punished. In Amsterdam, for instance, married persons who lived apart without judicial authority were fined a hundred florins for this crime for every month which the separation lasted, and the payment of the fine was enforced by imprisonment.

As regards the grounds for divorce, they all held that a wife's adultery entitled a husband to one ; and some of them went further and allowed other grounds such as desertion and the refusal of conjugal rights. Desertion, they declared, was worse than adultery, and Luther said in a sermon : "If she refuses, dismiss her, seek an Esther and let Vashti go. The secular power must here either coerce the woman or make away with her. Where this is not done, the husband must act as if his wife had been carried off by brigands, or killed, and look out for another."

And also : "If the wife is stubborn and refuses to fulfil her duty as a wife, it is time for the husband to say : 'If you refuse, another will comply'. If the wife will not, then let the maid come."

"Back to the patriarchs" was clearly Luther's motto in such cases ; and most of the Reformers looked at marriage solely from the husband's point of view. But there were exceptions. Some Reformers refused to deny to wives the rights which they accorded to husbands ; and one of them—Martin Bucer who, like Martin Luther, had happily united himself in wedlock to a nun—took the liberal view that a marriage might properly be dissolved, having failed to fulfil its purpose, when husband and wife detested each other so intensely that they could not live together in comfort.

There we see the principal changes which occurred at the beginning of the new era, when issue was joined between the Protestant and Roman Catholic communities; and we can, without difficulty, define their differences and see what came of them.

The Protestants were as religious in their way and according to their lights—perhaps also as superstitious—as the Romanists. Their religion was more ostentatious—and not really very much less arbitrary—than that of the Romanists. They were not in revolt against religion but against what they conceived to be an abuse of religion, the misinterpretation of the Scriptures, and the corrupt use of sacerdotal powers. The Church, they held, had usurped an authority which properly belonged to the State. The State ought to recover that authority; but it ought to legislate on the lines which the Scriptures prescribed, and the divines were the only persons who could be trusted to tell them what those lines were.

In the countries in which the Reformation triumphed, the State agreed. The Canon Law was not, indeed, swept away. A great deal of it was retained on the ground that it rested upon a scriptural basis; but its administration passed into other hands. At first it was administered by clerical Consistories, afterwards by secular Courts; and the provisions of the law thus administered naturally varied from country to country, some countries, even at that early date, going so far as to include cruelty, insanity and leprosy as grounds on which the Courts ought to be given a discretionary right to grant divorce.

But the net result of these changes was not to make divorce easier, but to make it more difficult. Of the law of the Church which the Reformers

overthrew it might fairly be said that its abuses were its only merits. For a bad law with many loop-holes the Reformers substituted a better law without any loop-holes; and the Roman Catholics, on their part, alarmed by the exposure of the abuses, pulled themselves together, at the Council of Trent, reconsidered their position and, to some extent, though not completely, stopped up the loop-holes which had made their law tolerable.

CHAPTER VIII

Why the Pope would not annul Henry VIII's marriage to Catherine of Aragon—Henry takes the Divorce Laws into his own hands and annuls it himself—The consequent breach with Rome.

THE Council of Trent may be regarded with equal propriety as a by-product of the Reformation or as the Roman Catholic reply to it.

It was the Reformers themselves who first mooted the idea of a Council. Having thrown the gauntlet down, they requested the Pope to call one in Germany for the discussion of the theses which they were anxious to defend. The Pope replied that he had no objection to calling the Council but that he certainly should not invite the Reformers to attend it unless they first humbled themselves and recanted their heresies; and the Reformers naturally refused to do that, having no desire to see their tenets condemned by a Court which, they were quite sure, would have prejudged the issue.

So their proposal lapsed; but their heresies had, nevertheless, created confusion in religious minds and drawn public attention to many abuses which it was difficult for conscientious ecclesiastics to defend. The calling of a Council was, for that reason, felt to be desirable: not for the purpose, apparently desired by the Protestants, of an ecclesiastical dog-fight, but in order that the abuses might be eliminated and the doctrines of the Church once more authoritatively defined.

It was, for political reasons which we need not trouble about, difficult to call it at once and inexpedient to call it in Germany. Eventually—but not until 1545—it met at Trent; but it did not get through its business with the rapidity of our modern Church Assemblies. Its sessions, which were frequently interrupted, continued until 1563. It dealt, of course, with many matters quite irrelevant to the present work; but there issued from it, among other things, declarations of doctrine in the matter of divorce which formed the basis of those explained by Monsignor Moyes to the Royal Commission, together with the express and clear intimation that anyone who declined to accept any of them was, or would be, damned.

For Roman Catholics everywhere those declarations of doctrine were, and presumably still are, equivalent to laws. They naturally do not want to be damned, and they do not doubt the Pope's power to damn them. In most Roman Catholic countries the doctrines were expressed in, and formed part of, the law of the land, and so became binding on Protestants as well as Catholics—an act of injustice which Catholics do not appear to think unreasonable.

A large part of Europe, however, had, by this time, become definitely Protestant, and begun to legislate about divorce without reference to Rome.

The legislation was of various degrees of liberality; but we need not trouble to classify the laws or catalogue the differences. Two points only claim close and careful attention; the struggle, in Catholic countries, after the Counter-Reformation had redrawn the religious map of Europe, between imperious clerical authority and insurgent secular opinion; and the successive compromises between clerical

authority and secular opinion, due to a policy of give and take, and the changes thereby gradually introduced into the marriage laws of a more or less Protestant England.

We will take the latter branch of the subject first and begin by considering the case of King Henry VIII.

It has been said—Roman Catholics are very fond of saying—that England was compelled to change her religion because Henry VIII wanted to change his wife; but that is very far from being true. There had been previous experiments in Protestantism—that of the Lollards, for instance; and the country, as well as the King, had its grievances against the Church. The dissolute lives of the monks and the wealth and extortionate exactions of the higher clergy were moving those of the laity who did not share the profits to sympathize with the Lutheran revolt if not to embrace all the Lutheran heresies. The Parliament of 1529 passed a good many anti-clerical measures; and many Englishmen were in a mood to restrict, if not to abolish, the jurisdiction of the Bishop of Rome—a "foreigner"—on English soil. But it was admittedly Henry's determination to divorce Catherine of Aragon, and the Pope's refusal to help him to do so, which brought matters to a head.

Whether we consider that Henry was treating Catherine badly or not, he had a case.

It is not true, as is commonly assumed, that his desire to get rid of her was inspired solely by his passion for Anne Boleyn. No doubt he was tired of her—there were many reasons to account for that. She was older than he was; and she was in bad health, and of a haughty temper and unpleasant character. But the idea of a divorce was mooted

before Anne Boleyn attracted him, and had a political origin.

Catherine had borne him a daughter—destined to be famous as the Bloody Mary. The state of her health made it very improbable—perhaps impossible—that she would ever bear him another child. He had ceased, and lost all desire, to cohabit with her. Civil war, however, was a contingency to be reckoned with if he died leaving no male heir; and England wanted no more civil wars, the Wars of the Roses being then a horror of recent memory. Only by means of a divorce and a second marriage could that horror be averted. A French princess, it was thought—there being no question as yet of Anne Boleyn—might be willing to take the vacant place.

That was how the trouble began. When Henry "fell to" the fascinations of Anne Boleyn, it naturally became more acute, the political motive being reinforced by a personal motive. Of a sudden, though rather late in the day, he found himself developing qualms of conscience, not about his relations with his mistress, but about his relations with his wife. He began to ask himself, and others: Was she really his wife? Was his marriage to her valid? Had he not been guilty of "mortal sin" in marrying her?

It had been a political marriage.

Catherine was the widow of Henry's elder brother, Prince Arthur, who had married her at the age of fifteen and died a year afterwards. Henry's marriage to her was, therefore, on the face of it, illegal as that of one between persons related to each other within—and, indeed, well within—the forbidden degrees. A Papal dispensation had been necessary to sanction it, and a Papal dispensation had been

obtained. But that—so Henry thought and a great many people agreed with him—did not settle the matter.

What one Pope had done another Pope could perfectly well undo; and it could be held—and, indeed, was held by a great many authorities on the Canon Law—that the dispensation could be, and ought to be, invalidated on the ground that Julius II, who had granted it, had exceeded his powers, seeing that he had accorded it without a sufficiently careful examination of the facts.

The case was put to Clement VII, but the circumstances of the time were such that his settlement of it neither did nor could depend upon either legal or religious considerations. The arguments which weighed with him were political and military arguments.

Rightly or wrongly, Clement had a good deal of sympathy with Henry; but he had not a free hand. He was a mere puppet in the hands of the Emperor Charles V, who had sent an army to Rome.

Charles was Catherine's nephew, and was determined to stand up for his aunt, not so much for her sake as for his own. If she had been willing to adopt the suggestion which was being pressed upon her from many quarters that she should take the veil and spend the rest of her life in a nunnery, he would have raised no objection to that solution of the difficulty. The nullification of her marriage could then have been pronounced without raising any awkward precedents, and all would have ended happily for everyone except Catherine herself. But he would not allow—and he would not suffer Clement to allow—its nullification on the ground that the dispensation permitting it had been invalid or

improper, for that would have set a very embarrassing precedent.

The difficulty was this:

Henry, after all, was only one of many European sovereigns who had contracted marriages within the forbidden degrees on the strength of Papal dispensations. Charles's own Empress was the child of such a marriage; and the sudden admission or announcement that such marriages were liable to be upset, and their issue liable to be declared to be bastards, would be a cause of distress and confusion to many royal families, to say nothing of wars over disputed successions.

Charles did not want that; and he was not only a powerful, but also a self-willed, arbitrary and imperious sovereign. He, or his envoy speaking on his behalf, had once threatened to hang all the Cardinals in their own apartments if they did not do what he told them; and both they and the Pope believed him to be a man of his word who would carry out his threat.

Clement's personal view of the case is thus summed up by Froude in *The Divorce of Catherine of Aragon*:

> Many things, he said, made for the King. All the divines were against the power of the Pope to dispense. Of the canon lawyers some were against it; and those who were not against it considered that the dispensing powers could only be used for a very urgent case, as, to prevent the ruin of a kingdom. The Pope's function was to judge whether such a cause had arisen; but no such inquiry was made when the dispensation of Julius was granted. The Emperor must not be surprised if he could do no more for the Queen.

Clement, however, was terribly afraid of the Emperor. Consequently, the only way in which

he could give practical effect to his view was by delaying his decision.

He did delay it; and so engaged in a game of "pull Devil, pull baker", which continued to be played for about four years, the advantage seeming to incline, first to the one side and then to the other, both Charles and Henry pressing, throughout the period, not only for a prompt hearing of the case but also for a decision in their favour.

If the negotiations were complicated, so also was the position.

Charles was certainly strong enough to coerce the Pope of Rome; but he was by no means strong enough to coerce the King of England. Henry, on his part, though not without respect for the Pope, who had bestowed on him the proud title of Defender of the Faith, had no intention whatever of allowing his wife's nephew to dictate to him in the Pope's name.

The Emperor wanted the Pope to excommunicate the King. The King, when he heard of that, replied that he "did not care a fig" whether he was excommunicated or not. The Pope realized that his excommunication would produce no particular effect in England unless the Emperor supported the menace of bell, book and candle by attacking the King with horse, foot and artillery; and the Emperor shrank from that course, partly because he was afraid of the Lutherans in his own Empire, and partly because he had reason to fear that, in the event of war, the King of France would be found fighting on the King of England's side.

In Rome, therefore, matters were practically at a deadlock; but in England they were moving rather fast. The Lutheran heresy was gaining ground in England; and even in circles in which

the actual heresy was regarded with indifference, anti-clericalism was gaining ground. Not only were the anti-clerical measures carried in the Parliament of 1529 supplemented by several others carried in the succeeding years. Henry himself was losing patience.

He was not a Lutheran. It was an attack on Lutheranism which had earned him his title of Defender of the Faith. So far as doctrine was concerned, what was good enough for the Pope was good enough for him. But he was no Papist. He bowed to the Pope's spiritual authority, but he refused to admit his temporal authority; and where his own private life and the public affairs of England were concerned, he proposed to decide for himself where spiritual authority ended and temporal pretensions began. He was the less disposed to admit the authority which the Pope claimed because it was so obviously being exercised at the dictation of a Foreign Power; and on that plea issue was joined.

As the Pope would not annul his marriage for him, Henry decided to annul it for himself, or, rather, to get it annulled by his own bishops. He did not even think it necessary to postpone his marriage to Anne Boleyn until he had done so; but, after he had married Anne Boleyn, Archbishop Cranmer, with three bishops as assessors, heard his case and gave judgment in his favour; whereupon the Pope, moved to action at last, issued a Bull which declared that the marriage thus set aside was a valid marriage and that Henry must obey or be excommunicated and lose all right to the allegiance of his subjects. The reply to that was, very properly, the passing of the Act of Succession and other Acts which formally and definitely deprived the Bishop of Rome

of any jurisdiction whatsoever in this realm of England; and Froude, with a characteristic snort of scorn for the pretensions of sacerdotalism, sums up the business thus:

The naked truth—and nakedness is not always indecent—was something of this kind.

A marriage with a brother's wife was forbidden by the universal law of Christendom. Kings, dukes, and other great men who disposed as they pleased of the hands of their sons and daughters, found it desirable, for political or domestic reasons, to form connections which the law prohibited, and therefore they maintained an Italian conjurer who professed, for a consideration, to turn wrong into right.

To marriages so arranged it was absurd to attach the same obligations as belonged to unions legitimately contracted. If, as often happened, such marriages turned out ill, the same conjurer who could make could unmake. This function also he was repeatedly called on to exercise, and, for a consideration also, he was usually compliant.

The King of England had been married as a boy to Catherine of Aragon, carrying out an arrangement between their respective fathers. The marriage had failed in the most important object for which royal marriages are formed: there was no male heir to the crown, nor any prospect of one. Henry, therefore, as any other Prince in Christendom would have done, applied to the Italian for assistance. The conjurer was willing, confessing that the case was one where his abilities might properly be employed. But another of his supporters interfered and forced him to refuse.

The King of England had always paid his share for the conjurer's maintenance. He was violently deprived of a concession which it was admitted that he had a right to claim. But for the conjurer's pretensions to make the unlawful lawful, he would not have been in the situation in which he found himself. What could be more natural than that, finding himself thus treated, he should have begun to doubt whether the conjurer, after all, had the power of making wrong into right? whether the marriage had not been wrong from the beginning?

And, when the magical artist began to curse, as his

habit was when doubts were thrown on his being the Vicar of the Almighty, what could be more natural, also, than to throw him and his tackle out of the window?

Out of the window, anyhow, he and his tackle went, to be brought back, for a little while after an interval, by Catherine's daughter, whom Henry had wished to exclude from the throne, and then thrown out of the same window, though with less violence, a second time. England, thenceforward, save during that regrettable interval, was to make her own marriage laws and her own provisions for divorce.

The way thus cleared, we will proceed to enquire what those provisions were, how far they fell short of adequacy, and how they were, by degrees, modified and extended.

CHAPTER IX

Henry VIII's marriage with Anne of Cleves annulled by Cranmer—New Divorce Laws drafted by Cranmer in the reign of Edward VI—Progress interrupted by the accession of the Bloody Mary—Canon Law revived in the reign of James I—Divorce thenceforward obtainable in England only by private Act of Parliament.

After his excommunication, the King became the Head of the Church in England in the stead of the Pope who had excommunicated him; but that change did not necessarily imply, and does not seem to have entailed, any very radical modification of his doctrinal views. The Reformation was coming, but it had by no means fully come. So far as marriage and divorce were concerned, the Canon Law was still followed, though it was arranged that it should, thenceforward, be interpreted and administered by English ecclesiastics instead of a Papal Court: a fact which we see brought into clear relief in the story of Henry's divorce from Anne of Cleves.

No question of cooling love was here involved—there was no love to cool.

Henry's marriage to Anne of Cleves, like his marriage to Catherine of Aragon, was a purely political match, arranged by his diplomatists, for the purpose of providing him with allies against his old enemy, the Emperor. He was persuaded to agree to marry her, without having seen her, on the strength of their favourable reports and Holbein's flattering portrait. It is an old story that,

as soon as he met her, he conceived a dislike for her because she was too fat, and spoke with disgust of the prospect of having to "mount that Flemish mare".

It was too late for him to back out of the marriage, though he would have been glad to do so, so he went on with it, pitying himself all the time; but, on the morning after the wedding, he said to Thomas Cromwell: "I liked her not well before, but now I like her much worse"; and he added that he did not believe she was a maid but that he had, anyhow, left her as good a maid as he had found her.

Naturally, being the man he was, he made up his mind to get rid of her as soon as the considerations of expediency permitted; and it is to be noted that the grounds on which he claimed the right to do so implied no change in the law but only a transference of the jurisdiction. They were based upon the provisions of the Canon Law, and were grounds on which many Popes had annulled many marriages, the representations being:

1. That the Queen had been bound, at the time of her marriage, by a prior contract to marry someone else, and that no proper proof of the nullification of that prior contract had been furnished.

2. That the marriage had never been consummated, and

3. That the King, having married Anne of Cleves only under pressure from his diplomatic advisers, had not given his "inner consent" to the marriage.

Application to the Pope was now, of course, out of the question; so the part which the Pope should have played was assigned to the Archbishop of Canterbury. An ecclesiastical synod, called for the purpose, heard the evidence and declared the allegations proved to its satisfaction; whereupon

Cranmer, for the third time—for he had nullified the marriage to Anne Boleyn as well as that to Catherine of Aragon—declared his sovereign's marriage invalid, and Anne was formally relegated to the rôle of Henry's "adopted sister", a position in which she appears to have been treated well and to have lived contentedly, leaving Henry free to marry Catherine Howard who was, before long, to be beheaded for transferring her affections to Thomas Culpepper.

The change, it is clear, did not amount to much. There had been a change of wives but no change of principle. Though the door had been opened to the reform of the marriage laws in England, no reform of any great practical value had, as yet, found a way through it. The King, certainly, had gained what he wanted; but his subjects had gained nothing, and perhaps some of them had lost something. For them the old laws, to all intents and purposes, remained in force; but the Pope's commercial travellers no longer went about the country offering to sell facilities for circumventing them at a reasonable price.

Such laws on the subject as were passed in Henry's reign were, indeed, primarily concerned with putting an end to "the usurped power of the Bishop of Rome" and with the legalizing of marriages which he either declared, or might declare, illegal; and it must have been difficult for quite a while for anybody to make out on what grounds, or by what means, a marriage could be dissolved. Moreover, confusion was further confounded by the accident that, after Henry's death, the Government of England was alternately, in the reigns of Edward VI and Mary, under Protestant and Roman Catholic control, and that the principal energies

of each Government in turn were concentrated upon the persecution of their opponents and the undoing of their measures.

Henry VIII meant, indeed, to have the marriage laws straightened out and amended; but he died before anything was done. Cranmer, who may be introduced as the first of our divorce law reformers, got his opportunity soon after the accession of Edward VI.

Cranmer had one qualification for the task—he was not a celibate. As a Fellow of Jesus College, Cambridge, he had married a barmaid, who had left him a widower; but that was so long ago that he had almost forgotten all about it. He had even forgotten his wife's maiden name, as appears from an account of his last trial in which we find this remarkable reference to the matter: "It was objected that he, being yet free, and before he entered into Holy Orders, married one Joan, surnamed Black or Brown, dwelling at the sign of the Dolphin in Cambridge. Whereunto he answered that whether she was called Black or Brown he knew not; but that he married there one Joan, that he granted."

Evidently the Archbishop's calf love for Miss Brown (or Miss Black, whichever it may have been) was not the sort of love for which men count the world well lost. Nothing, indeed, is known against the lady, who may have been a model of all the barmaidenly and other virtues; but one, nevertheless, finds it hard to resist the suspicion that Cranmer's brief experience of married life had shaken his faith in the doctrine that it was better for all marriages to be indissoluble; and that doctrine was not upheld by the Commission over which he presided, and which, after a careful review of the matter, issued, in 1552,

a draft code entitled "*Reformatio legum ecclesiasticarum*—The Reform of the ecclesiastical laws".

That code never become law—presumably because King Edward died soon after its delivery and Queen Mary, soon after she came to the throne, gave expression and effect to her opinion of Cranmer by allowing the bishops opposed to his views to beguile a leisure hour by burning him at the stake; but it will be useful to summarize its contents in order to show what was in the minds of the English Reformers at the time. Its principal recommendations were:

1. That adultery, being a heinous sin, ought to receive condign punishment.

2. That persons found guilty of adultery ought to be condemned either to perpetual banishment or to imprisonment for life.

3. That, where adultery is proved, the innocent party ought to be allowed, but the guilty party ought to be forbidden, to contract a fresh marriage.

4. That either desertion or the unexplained and protracted disappearance of a husband is a ground for divorce.

5. That divorce should be granted where "deadly hostility" subsists between husband and wife, or where there has been prolonged ill-treatment.

6. That incurable disease is not a ground for divorce.

7. That divorce should not be granted either in cases of collusion or when both parties are equally guilty of adultery.

8. That there shall be no more decrees of separation, leaving the marriage tie intact, seeing that "this practice is contrary to the Holy Scriptures, involves the greatest confusion, and has introduced an accumulation of evils into matrimony".

9. That persons guilty of fornication should be

excommunicated unless "after timely warning, they repent", and that, on repentance, they should be required to "place ten pounds in the box set apart for the poor of their Church", and that, if ten pounds is more than they can afford, they must "place there as much of their goods as can conveniently be spared".

That shows us exactly how far the English Reformers were prepared to go.

In some respects—in proposing that divorce should be allowed for desertion, cruelty and incompatibility of temper—they were prepared to go further than the law of England had yet gone; but, at the same time, they approached the subject in a spirit quite unacceptable to modern opinion.

They approached it, that is to say, in the spirit of divines who were not satisfied with preaching to their fellow men, but also claimed the right to control their conduct. They considered it the function of the State to punish as crimes whatever the divines denounced as sins. But they did, at least, recognize that the commission of certain sins constituted wrongs for which it behoved the State to provide a remedy as well as a punishment, and that in certain cases there could be no efficacious remedy except the dissolution of the marriage; and their standards of morality were unquestionably higher than those expressed in the injunction contained in Queen Mary's Articles in 1554:

"That every bishop and all other persons aforesaid do foresee that they suffer not any religious man, having solemnly professed chastity, to continue with his woman or wife, but that all such persons, after deprivation of their benefice or ecclesiastical promotion, be divorced, every one from his said

woman, and due punishment otherwise taken for the offence therein."

The implications of this are clear, and difficult to defend on moral grounds. They are, to put it crudely, not only that a call to a religious life is more important than any sort of human affection, but that any man who believes himself to have received such a call not only may, but ought to, lay his wife and family as victims on the altar of ecclesiastical obligation. And the injunction does not stand alone. Precisely the same note is struck in certain interrogatories of the period—notably in Cardinal Pole's direction that enquiry should be made, in 1557, in the Diocese of Canterbury: "Whether any of them (priests) that were, under the pretence of lawful matrimony, married and now reconciled, do privily resort to their pretended wives, or that the said women do privily resort unto them."

The implications of that are also clear.

It means that the Roman Catholic Church claimed—as we have seen from Monsignor Moyes that it still claims—to be entitled not only to refuse divorce when divorce is the only means of righting a wrong, but also to insist upon divorce in cases in which it would inflict a wrong upon innocent women and children. The claim, thus baldly stated, hardly seems to need refutation; but it does, when so stated, leave one a little surprised to find that women are, almost everywhere, more submissive than men to an ecclesiastical dictatorship so indifferent to their interests.

It was a claim, however, to which England did not long submit. After Queen Mary's death the English law took no further notice of it; and Queen Elizabeth's accession inaugurates a period of

remarkable uncertainty during which the divorce laws were so uniformly broken that it is impossible to say exactly what they were.

Queen Elizabeth herself does not seem to have taken much interest in the matter. She was a spinster, and the divorce laws do not matter to spinsters unless they are anxious to marry other women's husbands. So she let things slide. One hears of divorces in her reign, but one cannot be sure whether they were granted in accordance with the law or in tacit disregard of it; and one also finds that some marriages, following upon divorces, required Acts of Parliament to place their validity beyond dispute.

Indeed, the whole matter is enveloped in such clouds of doubt that some of the most eminent authorities on ecclesiastical law have given conflicting opinions as to the practical effect of the publication of Cranmer's Code. On the one hand, Sir Lewis Dibdin maintained before the Royal Commission that, in spite of its suggestion of grounds for the granting of divorce, "the law of the Church of England as to the indissolubility of marriage remained unchanged throughout the period under notice". On the other hand, Sir John Stoddart, giving evidence before a Select Committee of the House of Lords in 1844, upheld a diametrically opposite view:

"I apprehend," he said, "that the *Reformatio Legum*, having been published as a work of authority, although not of absolute legislative authority, it must have been, and in all probability was, followed, and that, for that reason in the spiritual courts there were dissolutions of marriage, because I believe that from about the year 1550 to the year 1602 marriage was not held by the Church, and therefore was not held by the law, to be indissoluble."

It would not be proper for a lay writer to offer to decide a question on which he finds doctors so illustrious in disagreement. The difficulty is this:

Two kinds, or degrees, of divorce are known to ecclesiastical law: divorce *a vinculo matrimonii* (or divorce from the matrimonial tie, which implies permission to marry again) and divorce *a mensa et thoro* (or divorce from bed and board, which does not give it). It can always be contended, and it can never be disproved, that the decrees of divorce pronounced during the period were of the latter kind and were intended by the Church only to accord those separations which Cranmer declared to be "contrary to the Holy Scriptures", and that the marriages subsequently contracted by the separated partners were illegal (though some irresponsible clergymen winked at them) and, strictly speaking, required Acts of Parliament to validate them and legitimize the children.

One thing, however, we do not know for certain; that the tendency was towards reaction, and that reaction gradually triumphed. That can be established by a comparison of two matrimonial suits.

In 1548 a Commission, presided over by the Archbishop of Canterbury, declared a second marriage which the Marquis of Northampton had contracted to be valid on the ground that his first marriage had been dissolved by his wife's adultery; but half a century later, in 1601, we come upon this report of the case of Rye *versus* Foljambe: "It was declared by all the Court that, whereas Foljambe was divorced from his first wife for incontinence of the woman, and afterwards he married Sarah Poge, daughter of Rye, in the former wife's lifetime, this was a void marriage because the first divorce was only *a mensa et thoro* and not *a vinculo matrimonii*. And John Whitgift, then

Archbishop of Canterbury, said that he had called to himself at Lambeth the most sage Divines and Civilians, and that they had all agreed thereon".

These quotations and a few others which will follow show pretty clearly why the promise of progress which we discovered in the time of Edward VI and Cranmer was not fulfilled. Matrimonial matters were not in England, as in other Protestant countries, transferred from ecclesiastical to civil jurisdiction. Ecclesiastical Courts continued to deal with them; and the only Court which could over-ride the ecclesiastical courts was the High Court of Parliament. The divines were in charge; and the divines, then as so often, were more anxious to restrict liberty than to extend it. Consequently the tide of progress was arrested, and the tide of reaction began to flow.

The next date of interest is 1603. Two quotations belonging to that year will illustrate the confusion which then prevailed. The first is taken from the Statute of Bigamy—the Statute which classed bigamy as a felony.

Nothing in the Act, we note, is to be held to refer to "any person, or persons, that are, or shall be, at the time of such marriage divorced by any sentence had, or hereafter to be had, in the Ecclesiastical Court, or to any person or persons where the former marriage has been or hereafter shall be by sentence in the Ecclesiastical Court declared to be void and of no effect". That would be conclusive if it stood alone, for Parliament would hardly have inserted the proviso if it had not been perfectly well known that the divorces pronounced by the Ecclesiastical Courts were sometimes followed by fresh marriages; but it does not stand alone.

We have to read, side by side with it, those

of the Canons of 1603 which treat of divorce, and particularly with the one which runs thus: "In all sentences pronounced only for divorce and separation *a mensa et thoro* there shall be a caution and restraint inserted in the Act of the said sentence, that the parties so separated shall live separately, chastely and continently, neither shall they, during each other's life, contract matrimony with any other person; and for the better observation of this last clause, the said sentence of divorce shall not be pronounced until the party or parties requiring the same have given good and sufficient security into the Court that they will not in any way break or transgress the said restrain, or prohibition."

That should be read carefully. It is interesting, not only on account of its absurdity, but also because of the light which it throws on the mentality of the divines of the period: the blind spots in the brain which prevented so many of them from looking the plain facts of human nature in the face, and the devout arrogance which permitted them to assume that admonition from them, unsupported by any legal sanction, would suffice to restrain a powerful passion from seeking an outlet.

Those divines of 1603 had, of course, no effective means of enforcing the chastity which they prescribed. Their device of treating persons released from their marriages as prisoners left at large on bail, and arranging, at least to make money out of a sin which they could not prevent, does not strike one as a particularly happy thought. They would have realized, if they had not suffered from those blind spots in the brain, that chastity and continence were sure to be more general in the country if divorced persons were allowed to marry than if they were forbidden to do so; and a few of them did

reflect and came, however reluctantly, to that conclusion. Bishop Hall of Norwich came to it, apparently with great reluctance. The great Jeremy Taylor accepted it with an approach to enthusiasm. This is what the Bishop said:

"I should earnestly advise and exhort those whom it may concern carefully and effectually to apply themselves to the forementioned remedies: reconciliation, if it be possible, to prevent a divorce; holy endeavours of a continued continence, if it may be obtained, to prevent a second marriage after divorce. But, if these prevail not, I dare not lay a load upon any man's conscience which God hath not burdened; I dare not ensnare those whom God will have free."

Thus we get wisdom from Bishop Hall, albeit by a process almost as laborious and painful as the drawing of a wisdom tooth. The reasons why, if matrimony is a holy estate, divorced persons should try to resist the temptation to enter into it, and should prefer "a continued continence", is not explained, and cannot be understood without explanation. So most people will prefer Jeremy Taylor's more liberal pronouncement:

"If the woman finds her husband grow worse by her tolerance and sufferance, she is to go off from it by such degrees as are on this side the extreme remedy, which I reckoned before in the first caution; and, if nothing else hinder, it is not only excusable but hugely charitable, and in a very great degree commendable, to be divorced."

That is a proper protest and sound sense. It is very encouraging to those who desire to see the grounds for divorce extended to be able to number among early champions of their cause the pious author of those great religious works, *Holy Living*

and *Holy Dying*. One feels it a pity that he did not meet and advise that other eminent divine, the so-called "judicious" Hooker who was inveigled into an injudicious marriage with his landlady's daughter, but did not allow his mind to dwell on the means of getting rid of her, replying, with pious resignation, to a pious friend who expressed the fear that he did not find his wife a very "comfortable companion":

"My dear George, if saints have usually a double share in the miseries of this life, I, that am none, ought not to repine at what my wise Creator hath appointed for me: but labour—as, indeed, I do daily—to submit myself to His will, and possess my soul in patience and peace."

And that, of course, as it happened, was for a long time to be the only remedy open to the average man or the average woman who was married to an uncomfortable companion.

The protests uttered by Bishop Hall and Jeremy Taylor were quite unavailing. Most of the divines were unreasonable. England, in spite of the Reformation, was once more a divine-ridden country and, so far as matrimonial matters were concerned, had entered on her darkest age.

The rigours of the Papal system had, at least, been conveniently tempered by corruption. It had been open to people who wanted divorces to buy them, on condition that they did not call them divorces; and the price had not always been prohibitive.

That way of escape from an unsuccessful marriage was now closed, and no other way of escape was opened in its place. The English Ecclesiastical Courts, whatever their faults, were incorruptible. It came about, therefore, almost by accident that,

for more than two hundred years after the accession of James I, the only way of getting round, or driving a coach and four through, the ecclesiastical law was to get a marriage dissolved by a private Act of Parliament; and that was a very costly process of which only very wealthy people could afford to avail themselves.

CHAPTER X

The Age of the Stuarts and the Interlude of the Commonwealth—Attitude towards Divorce of Archbishop Laud and John Milton—The story of Milton's Matrimonial Embarrassments—Why he wanted a Divorce.

We come to the time of the Stuarts and the interlude of the Commonwealth. The trend of ecclesiastical opinion during that period may be illustrated by the case of the High Church prelate, Archbishop Laud; that of intelligent lay opinion by the case of John Milton. But the former story amounts to very little.

Laud, in his youth, tried the difficult experiment of simultaneously serving God and Mammon. He began his clerical career as chaplain to the Earl of Devon. When the Earl wanted to marry Lady Rich, whose husband had divorced her, for very good reasons, he asked Laud to perform the ceremony and Laud performed it, "serving", as he afterwards confessed, "my ambition and the sins of others".

That service was duly rewarded. Laud was given preferment, becoming President of Saint John's College, Oxford, Bishop of Bath and Wells, and, eventually, Primate of All England. But concerning this incident in his career, one of his biographers writes: "If he sinned, he repented. A well-known Jesuit author writes to me: 'In the first editions of my work I had a note reflecting strongly on Laud for having married Lord Devonshire to Lady Rich in the lifetime of her husband. But when I found that he so regretted it in after life, and kept its

anniversary as a fast day, I struck his name out of the note on p. 101 of my third edition'." It was doubtless of this false step that Laud wrote: "*Lapidatus non pro sed a peccato*—Stoned not an account of a sin but *by* a sin; for it was on Saint Stephen's Day that this particular sin was committed."

That was—and, one may add, still is—the typical High Church attitude in this matter: an attitude which, inspired and animated by prepossessions almost identical with those which the Reformers had been trying to get rid of, made mountains out of molehills and molehills out of mountains, and so, though England was nominally a Protestant country, imposed upon those of the English people who had the misfortune to be unhappily married all the disadvantages of the Papal system without any of its compensating advantages. Against that attitude John Milton robustly protested, having his own very good reasons for doing so.

One thinks of Milton chiefly as the sublime author of "Paradise Lost"; but he has another claim to be remembered: as the first Englishman in a private station who, having married the wrong woman, and being very sorry that he had done so, loudly demanded that the divorce laws should be reformed in order that he might be enabled to get rid of her.

His own explanation of his mistake seems to tell us only part of the truth.

It all came about, he said, because he had always lived the virtuous life of a student, and consequently, at the age of thirty-five, knew very little about women and their wiles, so that when he met a pretty girl who had "a way with her", she found him an easy victim. But that is not quite the whole of the story.

The pretty girl's father was an impecunious country gentleman who had borrowed a substantial sum of money from Milton's father. He had a difficulty—the result, probably, of the Civil War—in paying the interest; and it occurred to him—or, more probably, to his wife—that the best way out of the difficulty would be to persuade Milton to marry his daughter.

The plan was tried, and succeeded; but the marriage which resulted from it was a failure.

Socially, Milton, as the son of a "scrivener"—a writer who worked for lawyers—was not Mr. Powell's equal. It was very flattering to him to be invited to Mr. Powell's country house in Oxfordshire and made much of there; and when Miss Mary Powell—a slip of a girl aged seventeen—set her cap at him, he very soon found himself engaged.

He was living at the time in Aldersgate Street, where he was taking pupils; and it was to that house that, having accepted Miss Mary Powell's hand in lieu of the money which Mr. Powell owed him, he brought his bride at Whitsun in the year 1643. And then the trouble began—so soon and so acutely that Milton actually began to write pamphlets on the necessity of reforming the divorce laws before the honeymoon was over.

It was not what people would call "a bad case." It is hard to make out that either husband or wife was very much to blame. There was no infidelity, nor was there any cruelty, on either side; but there was hopeless and irremediable incompatibility of temper. Milton found his girl-wife terribly stupid. Mrs. Milton found her clever and middle-aged husband's conversation too "philosophical", as she put it, for her taste. She preferred, and missed, the frivolous talk of the young officers in King Charles's

army who had danced with her at Oxford; and she probably considered that, in marrying Milton, who did not belong to the "county", she had married beneath her, and let him see that she thought so. So the day came when, after an exchange of heated words, she bounced out of the house and went back to her mother.

And then there was more trouble.

Mrs. Milton's visit to her mother was unduly protracted. It is not certain that Milton had very much objected to her going. It is very doubtful whether he really desired her to return. Her desertion of him, however, was an affront which wounded his dignity; and he felt it necessary to assert himself. So he sent a special messenger with a letter summoning her to return to him. She refused to do so, but dismissed his messenger discourteously; and it was then that he began the publication of those furious pamphlets in which he insisted that, as companionship was one of the objects of marriage, every husband ought to have an unquestionable right to divorce his wife if he did not find her conversation "matchable" and her company agreeable.

That publication—not openly and ostensibly a statement of Milton's own case, though obviously inspired by his disappointing experiences—is a landmark in the history of the subject. Its thesis and arguments mark a great advance on the contentions of all previous writers who had dealt with it.

Milton's ideal of marriage, though he propounded it in a tearing rage, was distinctly higher than those of either the Early Fathers or the Reformers.

Some of the latter had, indeed, lived very happily with their wives. Luther's union with Catherine von Bora seems to have realized all the essential conditions of an ideal marriage. But that was an

accident—and accidents will happen in every state of society. His theory was not on the same level as his fortunate practice. Milton was the first writer of any note to demand that there should be more in marriage than sensual satisfaction and the procreation of children.

Fidelity, he insisted, was not enough. There must also be that harmony of character which resulted in "matchable conversation". Where experience proved that to be impossible, and where, as in his case at that moment, there were no children whose interests must be safeguarded, the dissolution of the marriage was the obvious remedy for the unsatisfactory state of things, and the husband had the right to insist upon it.

Being very angry, he wrote without fully thinking the matter out. It does not seem to have occurred to him that the wife, as well as the husband, might have her rights and her point of view. The husband's point of view was the only one which he took into consideration. But all that there was to be seen from that point of view he saw clearly.

He clearly pictured to himself, and eloquently depicted to his readers, all the wearing horrors of an uncongenial marriage—"a worse condition than the loneliest single life", in which there was "a powerful reluctance and recoil of nature on either side, blasting all the content of mutual society", bringing about "that melancholy despair which we see in many wedded persons", and committing "two ensnared souls inevitably to kindle one another, not with the fire of love, but with a hatred irreconcilable, who, were they severed, would be straight friends in any other relation".

Hence his thesis :

"That indisposition, unfitness or contrariety of

mind, arising from a cause in nature unchangeable, hindering, and ever likely to hinder, the main benefits of conjugal society, which are solace and peace, is a greater reason of divorce than natural frigidity, especially if there be no children, and that there be mutual consent."

Hence his conclusion :

"He that can prove it lawful and just to claim the performance of a fit and matchable conversation no less essential to the prime scope of marriage than the gift of bodily conjunction, or else to have an equal plea of divorce as well as for that corporal deficiency ; he that can but lend us the clue that winds out this labyrinth of servitude to such a reasonable and expedient liberty as this—*deserves to be reckoned among the public benefactors of civil and human life, above the inventors of wine and oil.*"

None of the Reformers had got as far as that. None of them had got nearly as far. Some of them, it is true, had allowed that a Court might properly pronounce a decree of divorce when husband and wife had conceived such an intense mutual aversion that either might plausibly be suspected of plotting, or wishing to plot, against the other's life. But it is in these tracts of Milton's that we find our first reasoned plea for a divorce to be accorded, without any washing of dirty linen before a Court, and without the intervention of divines, on the ground of that incompatibility of temper which, though not inspiring any such criminal designs as those, is fatal to the happiness which a harmonious marriage can give ; and there is something really pathetic in his representation that a man who, like himself, has always lived chastely, is much more likely to be lured into marrying the wrong

woman, than the rake who has acquired considerable knowledge of women by living loosely.

We need not trouble ourselves with the arguments with which he supported his thesis—they belong to his age, not to ours.

His scriptural exegesis will not stand analysis. His interpretation of the Mosaic law of divorce is certainly unsound ; and it is equally certain that the words about divorce attributed to Christ by the Evangelists do not really contain the meaning which he wished to attach to them. His assumption, too, that when a marriage is a failure, the fault must necessarily be the wife's, and that all women are so anxious for husbands that none of them need or desire facilities for getting rid of them, was exaggerated at the time and would rightly and properly be resented by the women of the present generation ; and it may also be that the standard of attainments which he thought might be exacted from a wife was unfairly high, as a hostile contemporary critic hinted when he wrote to him :

"We believe you count no woman to due conversation accessible, as to you, except she can speak Hebrew, Greek, Latin and French, and dispute against the Canon Law as well as you."

That, indeed, would have been a great deal too much for any husband to expect in the absence of a specific stipulation, signed, sealed and delivered. It would have been grossly unfair to expect it from a girl of seventeen ; and it is not at all impossible that Mary Milton may have had a case against John Milton almost as strong as John's case against Mary. But these personal details are beside the point. The essence of Milton's contention is this : that marriage was not a matter in which any Church, or any

divines, had any right to exercise any authority whatsoever, but a contract concerning only the parties to that contract, dissoluble when the conditions of the contract were not fulfilled, and that those conditions included spiritual and intellectual concord as well as physical union and mutual fidelity. As Ernest Myers wrote :

"His ideal of true and perfect marriage appeared to him so sacred that he could not admit that considerations of expediency might justify the law in maintaining any meaner kind, or at least any kind in which the vital element of spiritual harmony was not."

The Puritan divines, of course, were up in arms against that—they were not Puritans for nothing; and it was their hostility which moved Milton to declare that new presbyter was old priest writ large. Their view of the matter—still maintained, as we have seen, by the Bishop of Chichester—was that a man who had tried and failed to achieve his ideal of a true and perfect marriage must be satisfied to make the best of a bad job and pretend that he had attained it, and must, on no account, be allowed a second chance of doing so.

One of them, the Reverend Herbert Palmer, preached savagely at Milton in a sermon delivered before the two Houses of Parliament, in Saint Margaret's Church, Westminster—a sermon in which he denounced him as the author of a "wicked book" and one "deserving to be burnt" ; but he was not intimidated. He revised and enlarged his pamphlet. He wrote and published a number of other pamphlets on the same subject ; and he was also observed, at the same time—a proof that he was really on the look-out for a second chance of seeking happiness in marriage—to be paying marked

attention to "a very handsome and witty gentlewoman, one of Dr. Davis's daughters".

This lady seems to have been the "Virgin wise and pure" in whose praise Milton wrote the sonnet addressed "to a virtuous young lady". Perhaps it was because she was so virtuous that the marked attentions never led to anything. Perhaps it was because her father, scenting the possibility of mischief, put his foot down and stopped them. It is impossible to say that Miss Davis would have proved the sort of wife that Milton wanted. Nothing is known of her but her name, and there is no story to be told; but the proof does seem fairly clear that Milton was anxious to get a divorce, not because he had abandoned his ideal of marriage, but because he was more eager than ever to realize it, and that he saw no reason why he should be condemned to the life of an anchorite if he could not get one, for he wrote: "If the Law make not a timely provision, let the Law, as reason is, bear the censure of the consequences."

And these were not idle words—they had a very definite meaning.

They meant nothing less than that Milton was prepared, and anxious, to instal Miss Davis in Mrs. Milton's place, as the mistress of the house in Aldersgate in which he was carrying on a prosperous business as a private tutor; and it is not surprising to learn that Miss Davis, highly as she valued Milton's friendship, was "averse to this notion", that Milton's friends implored him to refrain from an indiscretion so certain to prove injurious to his prospects as an instructor of the young, and that Mrs. Milton and her father and mother took alarm and decided that it was high time to arrange a reconciliation.

The appearance of Miss Davis on the scene was not their only reason for doing so; they also had political and pecuniary reasons.

The Royalist cause had lately been shattered in the battle of Naseby. They themselves were classed as Delinquents, and were liable to fines and other pains and penalties. It was not impossible—it was even likely—that Milton, as a pillar of the Parliamentary cause, might be able to save them from the pecuniary consequences of delinquency. So they laid their plans, and sought the help of some of Milton's friends and relatives, who felt that it would be better for him to patch up the old quarrel than to embark upon a new and perilous adventure with another helpmate, however handsome and witty.

They applied to Mr. Blackborough, of Saint Martin's-le-Grand Lane, and he promised to do what he could.

He was a kinsman of Milton's, and he did not approve of divorce. Nearly every day, in the course of his morning's constitutional stroll, Milton used to drop in on him for a chat. It was arranged, therefore, that Milton should meet the girl-wife whom he had not seen for so long at Mr. Blackborough's house; and as it was very doubtful whether, after the way in which she had treated him, he would fall in with any proposal for an interview, it was arranged that she should give him a surprise and that he should find her waiting for him when he walked into Mr. Blackborough's parlour, expecting to see Mr. Blackborough.

The day came, before very long, when he did find her there, and she played her part well, throwing herself at his feet and begging his pardon. She had been "froward", she said, but it was all her mother's

fault—her mother had told her to be froward. She loved him very much and would do her very best to make him a good wife if only he would take her back.

Presumably, wayward and wilful girl though she was, she had "a way with her". Milton had had no other reason for marrying her. There was no other reason why he should now take her back. But he did take her back, and let her mother come with her, with the result that, as his nephew Phillips put it, his "generous nature", stimulated by the representations of his friends, "soon brought him to an act of oblivion and a firm league of peace for the future".

That statement, however, was obviously the exaggeration of a relative who looked conscientiously on the bright side of things and was quite sure that the proper place for a family skeleton was the family cupboard. Milton himself, so far as we can make out, was not even sure that he was making the best of a bad job. Circumstances had compelled him to receive into his house, not only a wife whom he was tired of because she did not supply "matchable conversation", but a mother-in-law whom he thoroughly disliked, and a number of other relatives-in-law whose company he was far from desiring; and he expressed his feelings on the matter in the letter in which he wrote:

"Those whom the mere necessity of neighbourhood, or something else of a useless kind, had closely conjoined with me, whether by accident or the tie of law, they are the persons who daily sit in my company, weary me, nay, by Heaven, almost plague me to death whenever they are jointly in the humour for it."

And he relieved his feelings in verse as well as prose—in an excited sonnet which he wrote as a

scornful protest against the way in which divines and other leaders of thought had received his demand for the unlicensed liberty of divorce :

> I did but prompt the age to quit their clogs,
> By the known rules of ancient liberty,
> When straight a barbarous noise environs me
> Of Owls and Cuckoos, Asses, Apes and Dogs.

Which is to say that he had failed, and was obliged to admit his failure, seeing that his return to his wife was anything but a case of Paradise Regained, and that it was not the first, but the second, Mrs. Milton whom he referred to, with affectionate devotion, in a famous sonnet, as "my late espoused saint".

Did he deserve to fail ?

That is a question which different people will answer differently.

A good deal can be urged against him : that his conclusions do not logically follow from the scriptural premises on which he tried to hang them, that he was unfair to women, claiming for men a right which he denied to women, and that the arbitrary exercise of that right, in an age in which almost all women were men's economic dependents, might do injustice to them and cause embarrassment and inconvenience to the State—that he had, in short, generalized a great deal too hastily from his own hard case. It looks a little as if it had been because he realized that weakness in his position that he threw up the sponge.

All that is true ; but it is also true that Milton was a pioneer, a pathfinder, one who blazed a trail for others to follow.

He was the first writer to realize—what the rest of the world—the rest of England, at all events

—is even now only beginning to realize—that marriage and divorce are matters which primarily concern, not the divines or the Churches, but the husbands and the wives; that where it is proved or perceived that a marriage was a mistake and has been a failure, a *prima facie* ground for dissolving it has been established; that the second chance which a divorce gives may make two miserable people happy; and that all this ecclesiastical talk of "sin" in such a connection is capable of doing an infinity of harm. Clough, indeed, might very well have been thinking of Milton's unsuccessful fight for divorce when he wrote:

> Charge once more then, and be dumb;
> Let the victors when they come,
> When the forts of folly fall,
> Find thy body by the wall.

CHAPTER XI

The position in England—Causes which led to the Reform of the Divorce Laws in 1857—The position in France—Divorce introduced during the Revolution, abolished by the Bourbons, and then re-introduced by the Loi Naquet.

MILTON did not stand quite alone as an agitator for the reform of the divorce laws. He had an ally in John Selden, the lawyer, who, though he does not seem to have had any particular matrimonial troubles of his own of which one could make a story, agreed with Milton when he wrote :

"Of all actions of a man's life his marriage does least concern other people, yet of all actions of our life 'tis the most meddled with by other people."

But nothing came of the agitation. It died down, and the divorce laws of England remained unaltered, save in minor particulars, for about two hundred years.

One might have expected the reaction against Puritanism which followed the Restoration to bring some relaxation of their severity, but it did not.

Just as, under the Commonwealth, new presbyter had turned out to be old priest writ large, so in the reign of Charles II and his successors, both Stuart and Hanoverian—all of them, except Queen Anne, notoriously unfaithful to their marriage vows—the High Church divines successfully insisted upon the necessity of maintaining intact marriages of which every pledge and condition had been unscrupulously violated. As for the loose livers of

the period, who were unquestionably numerous, their views seem to have been that, as it was open to them to live loosely without interference, liberty of divorce was not a matter worth making a fuss about; and so we get the strange spectacle of divines and adulterers standing shoulder to shoulder as supporters of the marriage laws, the legal position being this:

The Canon Law, or most of it, had come back—brought back by James I. It allowed separation—divorce from bed and board; but it did not allow divorce from the matrimonial tie with liberty to re-marry. At the same time, the High Court of Parliament stood above the Canon Law, and could either dissolve or sanction marriages in spite of it; and at first, and for a considerable time, the Ecclesiastical Courts had nothing whatever to say in such a case. A private Bill dissolving marriage was introduced, passed through both Houses, received the royal assent, and became an Act, ecclesiastical opinion being voiced only through the mouths of the Bishops in the House of Lords.

That was how things went in the *cause célèbre* as the result of which, in 1669, Lord Roos, afterwards Earl of Rutland, was given leave to marry a second wife during the life time of his first wife from whom an ecclesiastical court had granted him a separation.

Both the King and the Duke of York interested themselves in that case, but not on religious grounds. Charles II supported Lord Roos because, like Henry VIII, he wanted to get rid of his own wife and marry another who might give him an heir. The Duke begged all his friends to vote against Lord Roos because he did not want his brother to have an heir and so prevent him from eventually reigning as James II. The Act was carried in the House of

Lords by the votes of the lay peers, in spite of the fact that sixteen of the eighteen bishops present voted against it: a matter to which we will return in a subsequent chapter, noting here merely that proceedings were subsequently regularized and it was ruled—for the avoidance, it is said, of fraud and collusion—that such legislative proceedings could be initiated only after an ecclesiastical court had heard the evidence and pronounced a divorce *a mensa et thoro* or decree of judicial separation.

The proceedings were, of course, expensive. They might cost anything from £5,000 to £20,000—as clear a case as anyone could wish to have of "one law for the rich and another for the poor"; and that condition of things prevailed, without any sort of remonstrance from the spiritual authorities, until Mr. Justice Maule delivered the following remarkable and famous judgment in the case of a man whom he found himself obliged to send to prison for bigamy.

"It did appear," His Lordship said in passing sentence, "that the prisoner had been hardly used. It was hard for him to be so used, and not to be able to have another wife to live with him, when the former had gone off to live in an improper state with another man. But the law was the same for him as it was for the rich man, and was equally open for him, through its aid, to afford relief; but, as the rich man would have done, he also should have pursued the proper means pointed out by law, whereby to obtain redress of his grievances.

"He should have brought an action against the man who was living in the way stated with his wife, and he should have obtained damages, and then he should have gone to the ecclesiastical court and obtained a divorce, which would have done what

seemed to have been done already, and then he should have gone to the House of Lords, and, proving all his case and the preliminary proceedings, have obtained a full and complete divorce, after which he might, if he had liked it, have married again.

The prisoner might, perhaps, object to this that he had not the money to pay the expenses, which would amount to about £500 or £600—perhaps he had not so many pence—but that did not exempt him from paying the penalty of the felony of which he had been convicted."

The bigamist had to go to prison because he had married his second wife without informing her of the existence of his first wife ; but it was the beautifully balanced irony of Mr. Justice Maule's judgment which—at long last, and without any help from any spiritual leader—awakened the slumbering consciences of English legislators.

It was realized—there was a general concensus of opinion—that it really was time for something to be done.

The date of the epoch-making judgment was 1845. After Ministers had turned the matter over in their minds for five years, a Royal Commission was appointed "to enquire into the present state of the law of divorce in this country, and, more particularly, into the mode of obtaining a divorce *a vinculo matrimonii*". The Commission duly reported ; and its report resulted, after sundry vicissitudes to be spoken of presently, in the passing of the Matrimonial Causes Act of 1857, subsequently, on several occasions, but never very radically, amended.

That is where we pass, in England, from the ancient to the modern history of divorce. Progress having been so long delayed, England had lagged far behind a good many other civilized countries.

A good deal had, in the meantime, been happening on the continent—a good deal that mattered; so that it will be better and more convenient now to turn back and trace the course of the battle in other fields of action.

That means that we must go back to that Council of Trent, so often mentioned, by which the Roman Catholic doctrine of marriage and divorce was stereotyped, and the formidable word "anathema" or "curse", was hurled, at the end of every paragraph, at all those who refused to submit to it.

Its decrees were not published in France, as the King considered that they infringed the royal prerogative, but they were practically enforced in France until the Revolution turned everything upside down. Protestant countries, of course, paid no attention to them. They could not be expected to do so seeing the Church tortured them in its prisons and burnt them at the stake and they were in open revolt against its jurisdiction. Consequently we see Prussia, under Frederick the Great —he himself being more advanced than his Lutherans, and under the influence of Voltaire and the Encyclopædists—introducing a liberal matrimonial code.

There is no need to quote it at length; but it is worth while to note that it was far more liberal than the English law of the present day. Subject to provisions designed to safeguard the hot-tempered and impetuous from the consequences of their own ill-considered impetuosity, it allowed divorce both for incompatibility of temper and by mutual consent. It allowed it also, as some of the Reformers had done, where either husband or wife had conceived an "unconquerable aversion" for the other, as well as for insanity, desertion and the commission of certain

criminal offences which entailed degrading punishments.

Another divorce law reformer of the period—though rather a queer one—was King Stanislas Augustus of Poland.

Though Poland was then, as now, a Catholic country, the Pope's writ was not, in this particular matter, allowed to run there. The Canon Law was taken from him; but the King claimed the right to interpret it instead of the Pope, and grant divorces, according to his own interpretation of it, as, when, and to whom he chose; and many of his subjects made it easier for him to grant them by deliberately celebrating their marriages in such a manner as to make them canonically invalid. Sometimes, for instance, it was falsely alleged, in the marriage contract, that the husband was impotent. Sometimes the bride's parents boxed her ears before witnesses immediately before the ceremony, so that it could at any time be sworn, if desired, that she had not married of her own free will, but under pressure.

It was, so to say, the *reductio ad absurdum* of the Canon Law; and the absurdity is the more complete because Stanislas Augustus used to divorce his subjects as often as they desired on the ground that, as every divorce was followed by a wedding and every wedding was an occasion of junketing and dancing, divorce was at once a benefit to trade and a stimulus to the gaiety of the nation.

The case of France was not so fortunate. Divorces there continued to be the exclusive privilege of Kings and other very important people—Henri IV, for instance, the Huguenot victor of Ivry who, after his white plume had been the oriflamme of the religious wars, allowed himself to be converted to

Catholicism, with his tongue in his cheek, on the ground that Paris was "well worth a mass".

He had a very good case against his wife, and she had an equally good case against him. It could not be represented that he had failed to consummate his marriage—the ardour of both his temperament and hers was too notorious. But Marguerite de Valois was his distant cousin; and though dispensation for the marriage had been duly sought and granted, the Pope now, after the lapse of twenty-seven years, conveniently discovered a plausible reason for declaring that dispensation to have been invalid and the marriage consequently to have been null and void.

Thus the Most Christian of the Kings was set free to marry Marie de Medicis; but there were no divorces in France for the common people, whether they were Catholic or Protestant, as is graphically shown in the following extract from Lebrun's *Journal de Jurisprudence.*

"The man Gautier and the woman Jacquette Pouceau, both of them Protestants, had married. Soon afterwards, finding that they could not tolerate each other, they divorced in conformity with the dogma of their religion. After that, they lived apart, and each of them contracted a fresh marriage. The Governor of La Rochelle, becoming aware of these facts, caused them to be arrested, and ordered them to be exhibited to the public, in front of the Palace, with chains round their necks, the woman with two hats and the man with two distaffs. After that, they were enjoined to go home together and threatened with capital punishment if they ever dared to marry again."

Thus, while the Pope showed the Kings how to drive a coach and four through the Canon Law, the strong arm of the civil law enforced it upon the common people in a conspicuously immoral age,

with the result that the Encyclopædists and other philosophers educated public opinion in preparation for the inevitable revolt against it. To this period belongs Voltaire's merry declaration that divorce seemed to be an institution of only a few weeks later origin than marriage, and Diderot's ironical praise of the matrimonial customs of Tahiti where, as he gathered from that great navigator Bougainville, "marriages often lasted no longer than a quarter of an hour". Some other philosopher, at the same time, quoted this remarkable inscription which was said to have been found on the great gate of the City of Agra :

"In the first year of the reign of King Gulef, 2,000 voluntary separations between husbands and wives were pronounced by the magistrates. The Emperor was indignant and abolished divorce. In the course of the following year there were, at Agra, 3,000 fewer marriages than in previous years and 7,000 more cases of adultery. Three hundred women were burnt alive for having murdered their husbands and 75 men were burnt alive for murdering their wives. The value of the furniture destroyed in the course of domestic brawls amounted to 3,000,000 rupees. The Emperor then re-established divorce."

It would, no doubt, be rash to offer to guarantee the statistics presented in that paragraph; but the importance of its citation is twofold. It shows not only that divorce was a subject on which men's minds were freely running, but also that the indissolubility of marriage was beginning to be recognized as a possible and not infrequent cause of breaches of the peace. The matter, therefore, was one to which a free France was practically certain to give attention.

It did not, indeed, get immediate attention. At the meeting of the States General the only

delegate who demanded it was the Duc d'Orléans, presently to be known better as Philippe Egalité. Other more urgent questions—mainly financial questions—were then blocking the way. Serious argumentative pamphlets on the subject, however, soon began to appear; and the urgent need of legislation on the subject was recognized by the Constitution which the Revolutionists voted on September 3, 1791. The law which they felt to be necessary was carried, a year later, by the Legislative Assembly, and began with these two interesting preambles:

"Considering how important it is that all Frenchmen should enjoy the right of divorce, as a corollary of that individual liberty which would be nullified by any indissoluble engagement," and

"Considering that many citizens have already taken advantage of the constitutional decision that marriage is only a civil contract, without waiting for the law to regulate the ways and means of divorce . . ."

Then followed the law itself. Supplemented by further legislation in 1794, it followed lines very similar to those of Frederick the Great's legislation in Prussia, and allowed divorce on grounds thus summarized in a memorandum presented to our Royal Commission by Sir John Macdonell:

"Mutual consent, incompatibility of temperament or character, insanity, sentence to corporal or degrading punishment, crime, cruelty or dishonourable treatment, notorious licentiousness, abandonment for at least two years, five years' absence without news of whereabouts, emigration under certain circumstances."

The success of the measure has been disputed, and, indeed, began to be disputed as soon as it had

been passed, by people who did not need its help. "The change", we read in Dean Luckock's work, "is said to have let loose such a flood of immorality that, within little more than a year, no less than 20,000 divorces were granted." The actual figures, which the Dean seems to have been too excited to look up, were 5,594 divorces, in Paris alone, in the twenty-seven months after the passing of the law; and there is a pleasant story of the actor, Talma, and his wife parting, after their divorce had been pronounced, in the friendliest manner with promises not to lose sight of each other, but to exchange calls from time to time.

Some abuses did unquestionably occur, some husbands, when restoring their wives their dowries, after the divorce, as the law directed them to do, making haste to pay them off in worthless assignats instead of good gold francs. On the other hand, the fact that, for some time after the enactment of the law, divorces outnumbered marriages can be held, with equal plausibility, to prove either that the new privileges was corrupting the morals of the people or that it must have been badly needed for the redress of an accumulated mass of grievances.

To anyone who has studied the social conditions of the period the latter view will seem the more credible. In the later days of the monarchy most of the married men whose lives one knows anything about were living on terms of intimacy with their neighbours' wives, and most of the married women whose private affairs one knows anything about had lovers. The new law did not create irregular situations but provided means of regularizing them.

It should be added, too, that the tone of the debates, which were fully reported and can still be read, effectually confutes the popular belief that

the French revolutionists were too fiercely athirst for each other's blood to take their duties as social reformers seriously. In actual fact they approached the subject with all the admirable solemnity of a bench of bishops, though, no doubt, with rather more vivacity and a more resolute determination to see things as they really were.

"What could be more immoral," one of them asked, "than to allow a man to change his wife as he changes his coat and a woman to change her husband as she changes her hat? Is not that to strike a blow at the dignity of marriage? Is it not to make marriage the plaything of caprice and frivolity and transform it into serial concubinage?"

So Régnault de l'Orme argued; and one feels that even an Archbishop of Canterbury could not have stated his case more convincingly or more sonorously. But one finds no less dignity, and a far keener appreciation of the cruelty of those hard cases which divorce laws are introduced to remedy in the speech in which Oudot defended the inclusion of incompatibility of temper among the grounds for which divorce could be granted:

"Incompatibility of temper," he said, "includes all the other grounds and is only a semi-official veil designed to cover evils which it would be scandalous to discuss publicly. Most of the offences which afford grounds for divorce cannot be proved. How are you going to prove adultery? How are you going to prove the addiction of either of the partners to secret vices? What you want to do, it seems, is to subject a woman to the cruel alternative of lamenting the wrong done her in silence or disclosing indecent details."

That is a sound, as well as a pleasant, view of the matter: interesting as the earliest Parliamentary

protest against that obligation to wash the dirty linen in public, as the condition precedent of the redress of a matrimonial grievance, to which so many of our clerical friends appear to attach so much importance. We will let it pass, however, and content ourselves with recording what happened.

It may be that divorce showed signs of becoming too popular in France. It may be that some people welcomed it as a new fashion and an opportunity of introducing variety into monotonous lives, rather than as a means of putting an end to intolerable matrimonial situations. Napoleon, who combined a high respect for stable family life with a keen appreciation of the pleasures of promiscuity, formed that opinion, and he consequently decided somewhat to curtail the licence which Republican enthusiasm had allowed.

He did not think it well for his subjects to spend so much of their time in divorcing each other on what he thought trivial pretexts. It seemed to him—his own practices may, perhaps, have led him to the conclusion—that even a husband's infidelity was rather too trivial a pretext to warrant so grave a step unless the act of adultery took place under the conjugal roof. But he had no religious prejudices in the matter. He wanted a divorce for himself in order to procure an heir for his precarious throne, and he also wanted a divorce for his brother Jerome, who had married beneath him in the United States, and whom he now wanted to marry to a Princess.

He obtained those divorces; and he also agreed with Oudot that divorce by mutual consent ought to be permitted. Mistakes were sure to be made, he said, when girls were married, as so many French girls were, immediately after leaving their convent schools, to husbands of whose character they

knew next to nothing; and common sense required the provision of means for correcting these mistakes "without noise or scandal".

Hence the provisions of the Code Napoleon which made divorce more difficult than it has been under the Republic, but nevertheless allowed it. It lasted until 1816 when the Restoration brought reaction, and divorce was once more forbidden, at the instance of that eminent Catholic legislator, the Vicomte de Bonald, whose recommendation of the measure which he proposed contained this remarkable passage:

"The purpose of marriage is not pleasure, for men can get pleasure without marrying. Nor is it merely the procreation of children, seeing that that result also can be achieved without marriage."

And that was a courtier's loyal tribute to his King, who saw no need for divorce as long as adultery was possible; for Louis XVIII, at the time when he complied with the wish of his clerical supporters that divorce should be abolished, was living, and proposed to continue to live, in open adultery with a married woman—the beautiful Mme du Cayla, on those knees, on an interesting occasion, he placed as a gift a beautifully bound copy of the Holy Scriptures, interleaved with notes of the Bank of France.

Divorce, therefore, went by the board and the Canon Law was brought back to France amid the acclamations of innumerable ecclesiastics. The attempts made to revive it after the revolutions of 1830 and 1848 were unsuccessful. Clerical influence, at those dates, was still strong enough to block the way. It remained strong, thanks to the Empress Eugénie, throughout the Second Empire; and though the agitation for divorce never ceased, it

was not really formidable until some time after the establishment of the third Republic. Then, at last, it came effective and resulted, in 1884, in the carrying of the Loi Naquet, which other laws subsequently supplemented.

Naquet was an earnest man, obstinate and resolute. He worked, in France, for the restitution of the divorce laws as strenuously as, in England, Wilberforce had worked for the abolition of the slave trade and Cobden for the abolition of the Corn Laws. He was not satisfied with writing on the subject and speaking about it in the Chamber of Deputies. He also travelled all over France in order to lecture about it in both the large and the small provincial towns. It was, he tells us, one of the proudest moments of his life when a bride came to listen to his lecture on her wedding day in her wedding dress, and received a tumultuously enthusiastic welcome from the rest of the audience.

One of his most ardent supporters was Dumas the Younger, the famous author of *La Dame aux Camélias*" ; and those who want to see on what arguments these French reformers rested their case will find them all very eloquently and logically, and rather amusingly, set forth in Dumas' pamphlet : *La question du Divorce*, published in 1880.

A brief summary of them shall form the subject of the next chapter.

CHAPTER XII

La Question du Divorce by Dumas *fils*—Stories of Remarkable Divorce and Nullity Cases extracted from that work.

SOME of the points which Dumas made in *La Question du Divorce* have already been dealt with; but he breaks new ground in reminding us that, even in Catholic countries, it was not always deemed necessary or expedient to disguise divorces as declarations of nullity. Even the prelates who assembled at the Council of Trent admitted that actual divorce, including the right to re-marry, was permissible for certain people in certain circumstances.

The Canon with its curse at the end of every clause was ready when Ambassadors from Venice presented themselves and made representations.

The Republic of Venice, they said, had subjects in a number of Greek Islands—Cyprus, Candia, Corfu, Zante and Cephalonia—whose long-standing custom it was to divorce adulterous wives and take others in their place. It was a gross injustice to curse them for doing so—especially as they had not been represented at the Council. The Canon ought to be modified to suit their case. Could not that be done?

It was found that the Canon could be so modified; and it was duly decided, under this Venetian pressure "not to condemn those who said that a marriage could be dissolved in the event of adultery and that another marriage would then be contracted,

as was held by Saint Ambrose and some of the Greek Fathers, and as was customary in the East, but only to curse those who declared that the Church was in error in teaching that adultery did not break the marriage tie and that it was not allowable to marry again in such a case."

It was a careful piece of casuistry: the Greek islanders to be allowed to do what the Church declared to be wrong on condition that they did not denounce the Church for holding that it was wrong; and it seems to justify the statement that the Church did, at the Council of Trent, in one and the same sentence, condemn divorce and sanction it, and give permission for the text of Saint Matthew to be applied in the East while insisting upon the application of the text of Saint Mark and Saint Luke in the West.

Our concern here, however, is only with the West. There, from the time of the Council of Trent onwards, the rule prevailed that the only way of terminating a marriage was to induce the Pope to declare it null and void; and it is therefore important to collect instances which will show in what sort of cases such declarations have, in practice, been obtainable.

In mediæval times, as is generally admitted and has repeatedly been pointed out in these pages, they were often obtained by misrepresentation or by bribery and corruption; so we need not go over that ground again. It is commonly taken for granted that no scandals of that kind occurred after the Church had been purified by the Counter-Reformation; but Dumas cites several modern instances which conflict rather formidably with that contention.

Here are three of his cases.

1. The case of a notorious courtesan, with a Catholic husband, who, having been offered marriage by a millionaire, obtained, in 1871 or 1872, a declaration of nullity on the strength of her statement—unsupported by any other evidence, and, in view of her reputation, quite incredible—that her marriage had never been consummated.

2. The case of the daughter of a Duchess, married to a Prince, to whom she had borne a child. It obviously could not be maintained that there had been no consummation of that marriage, and the family trees of the husband and wife, being known to all the world, made it impossible for either of them to contend that there had been any transgression of the forbidden degrees. But a way out of the difficulty was found. The wife's mother swore that she had forced her daughter to consent to the marriage against her will in order to please the Emperor Napoleon and the Empress Eugénie; and the desired decree of nullity was pronounced on those grounds.

3. The case of an officer in the cavalry who represented that he had married his wife only because he had been intimidated by his Aunt Eulalie. Questioned as to the nature of the intimidation, he replied that Aunt Eulalie had threatened to cut his name out of her will if he did not comply with her wishes. That evidence of coercion was accepted, and the cavalry officer got his decree.

These are very queer stories. So are the stories of the Marlborough and the Marconi divorces. Further research would, no doubt, bring others equally queer to light; and they leave one vainly trying to penetrate the mentality of the people who hold that marriages may quite properly be nullified by the Pope on such pretexts as those

invoked in the cases quoted, but that it is outrageous to think of dissolving them when one of the parties to the contract has so violated its fundamental conditions as to defeat its object and make life intolerable for the other partner. But there is one conclusion which seems fairly to follow from the narratives: that what the agitators for reform in France were trying to do was, in effect, to evolve order out of chaos and regularize proceedings for the dissolution of marriages instead of leaving them to be settled by unpredictable ecclesiastical caprices.

It could be argued, of course, that the exercise of ecclesiastical caprice was rare—as no doubt it was because it cost a great deal of money to set the ecclesiastical law in motion in such cases as those cited—and that the civil courts which it was proposed to set up would be sure to be readier to dissolve marriages than the Pope was to annul them. It might also be argued that it was better to retain the ecclesiastical jurisdiction if it could be assumed, or shown, that moral standards were highest in the countries in which the marriage knot was most difficult to unravel. But what evidence was there of that?

According to Dumas, there was no evidence of it whatsoever, and there was a great deal of evidence to the contrary.

France, Dumas pointed out, was the most important of the countries in which the ecclesiastical law which forbade divorce, unless it masqueraded as nullity, prevailed; and there was a concensus of opinion in the European and American worlds that France was the most immoral country on the continent—that more illegitimate children were born there, more husbands were unfaithful to their wives there, and more prostitution and irregular

ménages were to be found there than in any of the Protestant countries in which divorce was permitted.

And he did not pretend, as some French apologists have sometimes done, that the clients of the French prostitutes were mainly foreigners who came to Paris in order to "see life".

Moreover, experience proved, he continued, passing to another branch of the subject, that where the remedy of divorce for infidelity was unobtainable, one of two things almost invariably happened: Either the attempt was made to enforce conjugal fidelity by grotesque and barbarous punishments; or else, in more tolerant times, it was taken for granted that infidelity to matrimonial obligations, on a man's part at any rate, was not only a venial sin but also the most suitable of all subjects for frivolous treatment in fiction and farcical comedy.

In illustration of his point he gives a long list of the barbarous penalties inflicted on adulterers in various parts of the world: stoning to death, ordained in several countries, as well as among the Jews; the cutting off of the ears and nose; blinding, fustigation, and the Turkish law which prescribed that the partners in guilt should be sewn up together in a sack and pitched into the sea. Many of the penalties are too indecent to be described here: but one may cite two which were decreed in France towards the end of the Middle Ages:

"Philippe de Valois, Philippe le Bel and Jean le Bon made the following arrangements: the guilty parties were compelled to run, in a state of nudity, round the town in which they had caused the scandal, after being first smeared with honey and rolled in feathers; or, as an alternative, they were exhibited to the public, tied on to the backs of donkeys with their faces to the tail. But when Philippe le Bel

had to try his own case, he considered this penalty too light, and ordered that his wife, Marguerite de Bourgogne, who was accused of adultery, should be strangled in prison.

"In the Lyonnais the guilty parties were stripped naked. The woman was then required to run after a hen until she caught it, and the man to pick up hay until he had got together enough to make a truss of it. The woman, however, was allowed to have a friend who clipped the fowl's wings for her, and the man might have assistants who flung plenty of hay about for him to pick up. This ridiculous and indecent punishment was abolished by Louis XI in 1453."

That marks Louis XI as an enlightened monarch, —decidedly more enlightened, it will be agreed, than, for instance, Pope Sixtus IV, who thought it a good idea to protect the virtue of married women in the Papal States by permitting prostitution there on condition that the prostitutes—there are said to have been about forty thousand of them—made a regular weekly contribution to his treasury. These licences to work for the protection of the wives and daughters of the respectable, and these attempts to suppress adultery by making the adulterers a source of innocent merriment, inevitably disappeared when civilization and common sense triumphed; but, as marriage still remained indissoluble after their disappearance, the cause of morality gained little.

We have already glanced at the age which succeeded this age of barbarous punishments. It was the age in which, as an eloquent enthusiast for the cleanliness of the outside of the platter exclaimed, vice seemed to lose half its evil by losing all its grossness; the age in which, as we all know from seventeenth and eighteenth century memoirs, nearly

every married man loved somebody else's wife, and nearly every married woman loved somebody else's husband, and nobody thought the worse of them, and none of them thought the worse of each other, for doing so ; the age in which Sophie Arnould scoffingly declared marriage to be "the sacrament of adultery".

Those were the social conditions which the Revolution broke up and Napoleon was unwilling to revive. It was the Catholics—and, more particularly that highly respected spokesman of the Catholics, M. de Bonald—who wanted to revive them. There really is no other inference to be drawn from that cynical speech of his, quoted on a previous page—an assertion, in effect, that fornication and adultery, like the poor, would be "always with us", but were negligible evils provided that the supremacy of the Church was respected, that faithful husbands were bound by irrefragable ties to unfaithful wives who bore children to other men, that dutiful wives remained similarly united to brutal and licentious husbands whose extra-conjugal amours exposed them to the risk of venereal diseases which they would transmit to their children.

It appears that to some extent, and in certain circles, the re-enactment of the Canon Law in France did restore the social conditions which M. de Bonald admired ; but it failed to restore them entirely and in all circles. The middle classes were now coming into their own. A new generation was growing up, less disposed than the social leaders of the eighteenth century to turn a blind eye to conjugal irregularities, more inclined to insist upon conjugal rights, reluctant to stoop to compromises, resenting injuries and demanding remedies. So Dumas's next question is :

What remedies did the law provide ?

It offered a choice of two remedies: agreed separation which obviously implied and meant adultery by mutual consent, as the best available substitute for divorce by mutual consent, and "the taking of proceedings against the adulterous woman —proceedings which kill the children's respect for their mother, and sometimes for their father too, but do not liberate either the husband or the wife".

And the consequences of taking such proceedings ? Dumas shall tell us what ordinarily happened when they were taken.

"The husband, so terrible in the old days, when he had the advantage of the old laws, cuts an absolutely ridiculous figure when he calls upon the modern law to avenge him. This husband who, once upon a time, had the right to punish, not only his guilty wife but also her accomplice, with death, torture and disgrace, to-day sees his wife sentenced to two months' imprisonment in the presence of a public which laughs in his face, by judges who are laughing in their sleeves in spite of the air of gravity which they assume.

"She, especially if she is pretty, seems as sympathetic to them as he appears grotesque ; and if, on the other hand, she is ugly, people expect him to be only too pleased at an adventure which relieves him of an uninteresting occupation. The lover, whose heart the husband could, in the old days, have required his wife to eat, is now sent to prison for a fortnight and fined £4. If he is a good-looking fellow, some of the women who have been listening to the case will be quite willing to visit him in prison and do their best to console him for the cruelty of the law."

A poor remedy that, and certainly one most

unlikely to result in that reconciliation which the Church recommended. Consequently it was seldom taken. But if it was rejected, what else was there for the injured man to do?

Two courses, according to Dumas, were open to him. He might challenge his wife's paramour to a duel, or he might murder her.

The former course was absurd. He would be no better off if he killed his rival, and his injury would be aggravated if his rival killed or wounded him. The latter course was to be preferred: *Tue-la.*

So Dumas wrote in his pamphlet, quoting one of his plays written to drive home the same moral.

One need not take him too seriously. He can hardly have expected or wished every husband of every unfaithful wife in France to take him at his word. The carnage, in that case, if his estimate of the percentage of unfaithful wives in the country approaches accuracy, would have been on the scale of the *Dragonades*, the Massacre of Saint Bartholomew, and the Sicilian Vespers. But he was assuredly well within the truth when he pointed out that such murders could be committed with perfect impunity, seeing that it was the almost invariable practice of French juries to acquit the murderer.

He cited, giving full details, case after case in which that had happened, and he drew the conclusion that the cause of morality had not gained but had suffered by insistence upon the ecclesiastical dogma that the marriage tie was indissoluble: that it had been the cause, not only of the multiplication of sexual irregularities and of a wide-spread preference of concubinage to marriage, but also of a notable increase in the number of crimes of violence. As the present writer wrote in *Dumas, Father and Son:*

Dumas demanded liberal facilities for divorce, not as a concession to vice, but as an aid to virtue as well as happiness. He was in favour of divorce because he was in favour of marriage. He was so much in favour of marriage that a critic once accused him of making "a fetish of regularity in sexual relations". His own second marriage, to which the lady's divorce had been the necessary prelude, is said to to have been serenely happy. His pamphlet demanding divorce was a political act as well as a display of fireworks. It rallied public opinion to the support of that Loi Naquet which brought divorce back into the French code ; and it is, perhaps, the only one of Dumas' contributions to social philosophy which has any real value. . . . Knowing what he wanted, he got what he wanted, not only for himself but also for his countrymen.

CHAPTER XIII

Divorce in Saxon England—Introduction of Canon Law into England by the Conqueror—Stuart and Georgian England—Divorce advocated by Jeremy Bentham in the Interest of "The Greatest Happiness of the Greatest Number" and by John Stuart Mill because he wanted to marry Mrs. Taylor.

THE first point which has to be made in any account of divorce in England is this: that our divorce law reformers are really seeking to recover for modern England liberties which Saxon England enjoyed.

Saxon England was a Christian country. In Edward the Confessor it had a Saint, duly canonized, for its King. But Saxon England allowed divorce. The proof of that is contained in certain strange documents known as Penitentials, of which some readers may desire an explanation.

Penance, as everybody knows, is the discipline of Roman Catholicism. It is imposed by the priest after the confession of sins as a condition of absolution. But the assessment of sins and the allocation of penances could not very well—or so the Church held—be left entirely to the judgment of the individual priest. Not only did one sin differ from another sin in magnitude. The sinfulness of sins was also felt to depend, to some extent, on the sinner's position in the world. Some sins might be venial in a layman but deadly in a priest; and it was thought that priests who heard confessions needed instruction in these matters in order that they might not let their friends off too lightly or discover

in the right to impose penances opportunities of venting their spite against people whom they disliked.

The Penitentials, therefore, were written and circulated for their learning. They were, so to say, hand-books for the use of those who heard confessions and imposed penances; and they throw a lurid light upon the moral standards of the ecclesiastics of the age in which they were written, showing that it was then thought necessary to prescribe specific penalties for, among others, Bishops who acknowledged an addiction to unnatural vices. A number of them have been collected—some of them by Bishop Stubbs—and one of them, the Penitential of Theodore of Tarsus, Archbishop of Canterbury from 668 to 698, contains a list of the grounds on which divorce, with permission to re-marry, could be granted, these including desertion, adultery, impotence, relationship, long absence and captivity, and even mutual consent.

The Canon Law, however, came over with the Conqueror, and gradually prevailed, though there seems at first to have been some difficulty in enforcing it on the recalcitrant. It must certainly have been firmly established in England at the time when Henry VIII, finding it inconvenient, revolted against it; but the example which he set was soon widely followed. According to Cranmer's biographer, Strype, divorce "mightily prevailed" in the latter years of his reign and became still more prevalent in the reign of Edward VI, when, as he tells us:

"Noblemen would very frequently put away their wives and marry others if they like another woman better or were like to obtain wealth by her. And they would sometimes pretend their former

wives to be false to their beds and so be divorced and marry again such as they fancied".

A proof, it must be admitted, that divorce does not suffice, human nature being what it is, to make the relations of the sexes as simple and pleasant as they are said to have been in the Garden of Eden before the Fall; and, in the reign of the Bloody Mary, there naturally was reaction. If Strype's ascription of motive is correct, it was not altogether uncalled for; but it was not enough for the reactionaries to prevent the people who wanted divorces from obtaining them. Their conception of piety also required them, as has already been indicated, to force divorces upon people who did not want them.

A number of clergymen had taken advantage of the Reformation to marry. The stern decree now went forth that they must "bring their wives within a fortnight that they might be divorced from them". They were told that, in living with their wives or "their women as the Papists now choose to style them", they were setting an "evil example to all good Christian people", and that they must no more consort with them either as wives or as concubines.

Such were the moral standards of the Church in the middle of the sixteenth century. Such was its inhumanity towards the women whose marriages, when contracted, had been perfectly valid by the law both of the land and of the Church. The reconciliation of such a moral standard with the Church's claim to be a valuable moral force is difficult; and we shall encounter that difficulty again, more than once, as the narrative proceeds, whether it is the Church of Rome or the Church of England whose actions and attitude we have to examine.

There was one difference, however, between the two Churches. The Church of Rome spoke with a

single voice. In the Church of England we, now and again, find a divine breaking away from the others and stating the case for divorce. A Caroline divine who stated it very effectively was Dr. Cosin, Bishop of Durham.

Speaking in the debate in the House of Lords in 1669, on the private Bill "for John Manners called Lord Roos to marry again", he quoted a long list of Early Fathers who had held marriage to be dissoluble. The other Bishops, being less learned, were quite unable to confute him. The most that they felt capable of doing was to vote against him; and Dean Luckock, who has been so often quoted, finding the speech lying as an obstacle in the path of his own arguments, was satisfied, first to say that Bishop Cosin could have been confuted if his opponents had been better equipped, and then to express a kindly Christian pity for his "failure of memory and judgment consequent on his advanced age".

Bishop Cosin's commendable attitude, however, was exceptional on the episcopal bench. Most of the Bishops in most of the divorce suits which came before the House of Lords cast their votes against the private Bills introduced to set the husbands of vicious women free to marry virtuous women; but they do not appear to have thought it incumbent on them to exert their influence to prevent any of those notorious abuses of the marriage law which they must have known to be bound to lead to matrimonial shipwreck. For one cannot help feeling that, if their concern for morality had been equal to their concern for ecclesiasticism, they would have found some means of putting a stop to the scandal of the "Fleet Marriages" which furnished Besant and Rice with a theme for one of their novels, and

are thus described by Mr. Joseph McCabe in his *Marriage and Divorce in England:*

Vagrant parsons set up, near all the frequented thoroughfares, in dingy rooms. Touts were employed to find customers for them; sometimes to find husbands or wives for the customers. Young ladies were virtually dragged off the street, and they, at times, married strangers out of sheer terror. Heiresses were abducted or persuaded to elope, and married before you could harness the coach to follow them. Young men and women, exchanging hasty vows, turned into the back parlour of a low inn and found a drunken parson who would unite them for a glass of gin and a paper of tobacco. Gangs of home-coming sailors were first intoxicated and then guided by the women to the marriage-shops. There were between two and three hundred marriages in a few days whenever the Fleet came in. More respectable men were inveigled into drink and, the next morning, found themselves to their surprise a-bed with a wife. In places you could not walk along the street but two or three seedy parsons would badger you to come and be married cheaply, and bargain against each other for your patronage.

These appalling marriages were indissoluble. Divorce by Act of Parliament, at a cost of five thousand pounds, means indissolubility.

These scandalous practices were allowed to continue for nearly half a century. Either the Bishops were unable to stop them, or saw no harm in them. On neither assumption can it be denied that their record is a sorry one; for it is clear that those who insist most emphatically that the marriage knot must never, in any circumstances, be unloosed, are under a special obligation to do all that is in their power to make sure that the tieing of the knot is hedged about by adequate precautions to prevent rash marriages.

For the moment, however, we will let that pass. We shall meet the Bishops again—quite other

Bishops, of course—when we come to the time when Parliament, at long last, began to occupy itself with the dissolubility of marriage with the view, not of redressing the grievance of an individual, but of amending the law for the benefit of the community at large. We shall find their attitude, with rare exceptions, both then and in the intervening years, purely obstructive.

For Bishops, in this matter, have never been pioneers; and some of them have worked as hard for the prohibition of divorce as others did for the retention of capital punishment for petty larceny. All the effective advocates of divorce reform have been laymen—most of them laymen whose names are highly respected, and some of them laymen who had no more reason than the Bishops themselves for desiring greater liberty of divorce but pressed for it solely on grounds of equity in the public interest.

Milton's demand for divorce law reform, as we have seen, was not disinterested, and probably gained in force and eloquence from the presence of the complicated personal equation. John Selden, the jurist, however, who agreed with him, and used more sober and judicial language, spoke as a jurist solely concerned with justice; and a later plea, not less calm and dispassionate than his, was that of the famous Utilitarian philosopher Jeremy Bentham.

Jeremy, it is true, had his misfortunes in love; but they were not such misfortunes as a greater latitude of divorce might have helped him to surmount.

He fell in love with Lady Caroline Fox, the daughter of the second Lord Holland, whose acquaintance he had made at Lord Lansdowne's place at Bowood, where the patronage of the great Whig nobleman was helping him to get over the "inferiority complex"

with which he had started life; but his suit did not prosper because he did not belong to her social world and was not at ease in it. The only visible result of the marked attentions which he paid her was that he suddenly ceased to receive invitations to Bowood. When, having thought the matter over at leisure, he took his courage in his two hands, at the age of fifty-seven, and made her a formal proposal of marriage, she declined it "with great respect", saying that she could never be more than a friend to him.

Divorce, therefore, would have been of no use to Jeremy; and it was not as a lover but as a philosopher that he approached the question.

As a Utilitarian, Jeremy had laid down the famous and familiar principle that legislation ought always to be directed towards securing "the greatest happiness of the greatest number". He contemptuously rejected the ascetic estimate of man by Early Fathers and others as "a degenerate being who ought to punish himself without ceasing for the crime of being born", and confidently attributed much of the evil in the world to "religious maxims badly understood". But that did not mean that he was a loose liver or an admirer of either concubinage or promiscuity. He was, though a bachelor, a very respectable old gentleman—as respectable an old gentleman as one would be likely to meet in a day's march. He certainly had a higher opinion of marriage—though he knew the estate only by repute and not from experience—than many married men.

"From whatever point of view", he wrote, "we regard the institution of marriage, we cannot fail to be struck by the utility of that excellent arrangement: the bond that holds society together; the very groundwork of our civilization"

That is the starting point—and a very good starting point: loftier in its tone, though more formal in its language, than that of the Apostle of the Gentiles, the Early Fathers, and the Marriage Service in the Book of Common Prayer all put together. The second proposition, of which the most devout will not complain, is that "marriage for life" is the ideal, being the arrangement "best adapted to the reciprocal interests of the contracting parties".

"Love on the part of the man", Jeremy continues, "love and prudence on the part of the woman, the enlightened foresight and the affection of the pair in their capacity as parents, all conspire to impress the character of perpetuity upon this contractual alliance".

It is a noble sentiment expressed with a solemnity worthy of the Bishops, when they put their heads together in a Church Assembly at Lambeth Palace; but it leads up to the recognition of a difficulty. Unhappily, our ideals are not always fulfilled and our sanguine expectations are not always realized. If the greatest happiness of the greatest number is to be secured, provision must be made for these cases also. So Jeremy writes:

"If there were a law which allowed the taking of a partner, a steward, a companion only on condition that one never parted from him, everybody would cry: 'What tyranny! What madness!'

"Now a husband is at once partner, guardian, steward, companion, and something more than all of them combined: yet in most civilized countries no husband can be had except for life.

"To live at all times under the sway of a man one loathes is nothing less than slavery: to be forced to receive his embraces is a misery too great to be

borne even by a slave. It is idle to urge that the yoke is reciprocal—that does but double the misery."

In the interest of the greatest happiness of the greatest number, that misery ought to be alleviated. Divorce—so the argument continues—affords the only possible means of alleviating it. Neither the Church nor the State stands to gain anything by insisting upon its continuance, while the refusal to remove it has, or may have, grave consequences which the State does, and the Church ought to, wish to avoid—consequences which, be it observed, Dumas perceived to be actually following from the refusal of divorce in France. It is calculated, Jeremy Bentham insists, to deter men from marriage and to make them prefer concubinage, because "a prohibition against leaving serves as a deterrent against coming in", and to promote immorality because "the number of acts of infidelity will vary inversely with the number of marriage contracts"; and it must also, in the nature of the case, operate as an incentive to crime.

"When death affords the only mode of deliverance, how terrible are the temptations that arise! What crimes may not be bred in such a situation! The cases that remain undiscovered are, perhaps, more numerous than those which come to light!"

Thus the chivalrous old bachelor, unlike the married Milton, looked at the problem from the woman's point of view, using, it may be incidentally observed, one of the arguments which we found in the inscription on the great gate at Agra.

A woman's need for divorce, if she needs it at all, must generally, he felt, be greater than a man's, because men have so many opportunities denied to women—with the exception, perhaps, of actresses and film stars—of accommodating their lives to

the unforeseen and unpredictable disappointments, disillusions and adversities of marriage. The fact comes out clear in the passage in which he speaks of the inadequacy of the relief given by judicial separations :

"The outraged wife and her tyrant of a husband are placed on exactly the same footing as to re-marriage. Now this apparent equality covers a very real inequality ; for while public opinion allows to the dominant sex a large measure of freedom in their sexual relations, it imposes on the weaker sex the most severe restraint."

A statement which still has truth in it, though it is not quite as true as it was when Jeremy Bentham wrote.

From him we may turn to his disciple, John Stuart Mill. He also spoke in favour of divorce as the champion of women's rights ; but he did so, unlike Jeremy, because he was in love ; and his case was one of those in which, if only the law had allowed it, a divorce by mutual consent would have been as easy to arrange as a marriage and would have given equal satisfaction to all the parties to the transaction. It is worth while to tell the story.

Mill was in love with Mrs. Taylor, the wife of a very prosperous and respectable drysalter carrying on business in Mark Lane. He had been introduced to her by Mr. Fox, the Minister of a place of worship which Mr. and Mrs. Taylor attended, to whom Mrs. Taylor had confided her need for more intelligent—or as Milton would have said, more "matchable"—conversation than Mr. Taylor could supply. Mrs. Taylor made no secret of the fact that she preferred his society to that of Mr. Taylor ; and Mr. Taylor, being a reasonable man, or a man with other interests, did not mind. Twice a week Mill

dined *tête-à-tête* with Mrs. Taylor at Taylor's house while he obligingly went out to dine elsewhere; and when Mrs. Taylor left her husband to go and live in the country, he raised no objection to Mill's visiting her there.

"I visited her equally", Mill writes, "in both places, and was greatly indebted to the strength of character which enabled her to disregard the false interpretations liable to be put on the frequency of my visits to her while living generally apart from Mr. Taylor, and on our occasionally travelling together, though, in all other respects, our conduct during these years gave not the slightest ground for any other supposition than the true one, that our relation to each other at that time was one of strong affection and confidential intimacy only. For though we did not consider the ordinances of society binding on a subject so entirely personal, we did feel that our conduct should be such as to bring no discredit on her husband, nor, therefore, on herself."

Eventually, as it happened, the death of Mr. Taylor cut the Gordian knot, and, as soon as Mrs. Taylor was thus released, Mill married her. Her first marriage had been equally unsatisfactory to her and to her husband, though for no reason for which blame could be imputed to either of them. Her second marriage was a complete success, bringing equal happiness to her and to Mill. Here is Mill's impersonal tribute to it:

"What marriage may be in the case of two persons of cultivated faculties, identical in opinions and purposes, between whom there exists that best kind of equality, similarity of powers and capacities, with reciprocal superiority in them, so that each can enjoy the luxury of looking up to the other, and can have alternately the pleasure of leading and of being

led in the path of development—I will not attempt to describe. To those who can conceive it there is no need: to those who cannot it would appear the dream of an enthusiast. But I maintain, with profoundest conviction, that this, and this only, is the ideal marriage."

Mill cherished that ideal for years before Mr. Taylor's premature but convenient death gave him the opportunity of realizing it. If Mr. Taylor had not conveniently happened to die, he would never have realized it—nor would Mrs. Taylor, for no serious student of life will take the view of the Bishop of Durham who seems to speak, in such matters, like Athanasius *contra mundum*, that she could have loved her drysalter if she had tried. The law being what it was, Mr. Taylor could not possibly have helped in the matter otherwise than by dying, even if Mrs. Taylor had tried to force his hand by defying those "ordinances of society" which neither she nor Mill considered binding, though they conformed to them out of consideration for Mr. Taylor's feelings.

On the other hand, a divorce by mutual consent, if obtainable, would obviously have ironed out all the trouble and nobody would have been a penny the worse for it. Because it was not obtainable—one can discover no other reason—Mill's business was regarded as everybody's business. Some of his friends took it upon themselves to remonstrate with him, and others laughed at him. He ceased to be welcome at the house of Mrs. Grote—the wife of the banker-historian and protectress of Fanny Elssller and her illegitimate child—and other ladies whom he was accustomed to visit; and the attitude of his male friends is illustrated by an interesting passage in J. A. Roebuck's *Reminiscences*.

Roebuck relates how, at a party given by Mrs. Charles Buller, he saw Mill enter the room with Mrs. Taylor hanging on his arm, and he continues:

"The manner of the lady, the evident devotion of the gentleman, soon attracted universal attention, and a suppressed titter went round the room. My affection for Mill was so warm and so sincere that I was hurt by anything which brought ridicule upon him. I saw, or thought I saw, how mischievous might be this affair, and as we had become in all things like brothers, I determined, most unwisely, to speak to him on the subject.

"With this resolution I went to the India House next day, and then frankly told him what I thought might result from his connection with Mrs. Taylor. He received my warnings coldly, and after some time I took my leave, little thinking what effect my remonstrances had produced.

"The next day I called again at the India House, not with any intention of renewing the subject, but in accordance with a long-formed habit of constantly seeing and conversing with Mill. The moment I entered the room I saw that, so far as he was concerned, our friendship was at an end. His manner was not merely cold but repulsive; and I, seeing how matters were, left him."

Roebuck, on his own admission, had behaved foolishly; but the whole situation was an absurd example of British hypocrisy.

If Mill had kept an opera dancer in a villa in Saint John's Wood, or had consorted with prostitutes, his male friends would have been very shy of casting the first stone and his female friends would have affected ignorance of his proceedings. Because he made no secret of the fact that he found happiness in the society of a married woman who was hopelessly

estranged from her husband—an admirable woman to whom he would gladly have been married—he had to endure the indignity of a social boycott.

He did not mind very much—he may not have minded at all. He probably ceased to care for society when it ceased to be the only alternative to solitude and he could find in his love for Mrs. Taylor the outlet of his emotions of which, as he has told us, he had long felt the need. But he resented the world's attitude on Mrs. Taylor's account; and that is why the love for which he counted Roebuck's friendship and Mrs. Grote's politeness well lost expressed itself in a disquisition on the subjugation of woman—a disquisition in which we find this eloquent plea for the second chance in married life:

"It is a very cruel aggravation of her fate that she should be allowed to try this chance only once. . . . Since her all in life depends upon her obtaining a good master, she should be allowed to change again and again until she finds one. . . . In some slave codes the slave could, under certain circumstances of ill-usage, legally compel the master to sell him, but no amount of ill-usage, without adultery superadded, will in England free a wife from her tormentor."

"Master," no doubt, is a word which modern wives will not admit; but, with the word "partner" substituted, the sentiment is as sound as when it was written.

CHAPTER XIV

Cases in Georgian and Victorian England which called attention to the Divorce Laws—The case of Lord and Lady Byron—The case of the Honourable Mrs. Norton.

In the early days of the fight for divorce in England, the Church, as we have seen, won most of the battles.

It had quickly recovered from its set-back in the reign of Edward VI; and if it had not quite succeeded in putting an end to divorce it had, at least, managed to establish the principle that divorce must be regarded as the exclusive privilege of the wealthy few—the great principle, in other words, that there should be one divorce law for the rich and another for the poor. Nor were the poor bold enough to challenge it. The mass of the community, so far as one can make out, accepted the principle—together with the further principle that there should be one divorce law for men and another for women—as a part of the unalterable nature of things.

Things went on like that for about a couple of centuries; but then came that sarcastic judgment of Mr. Justice Maule's which has been quoted—a trumpet call, as it were, inviting the renewal of the combat; and there were various reasons why that trumpet call received attention.

In England, as in France, the middle classes were coming into their own and beginning to realize their importance. The power of the Press was also beginning to make itself felt. Every now and again, when really important people for one reason or

another washed their dirty family linen in public, notice was taken and inferences were drawn. Hardly anybody outside the House of Lords had shown any particular interest in the matrimonial misfortunes of Lord Roos; but a great deal of publicity was given to the matrimonial quarrels in which charges were brought against Lord Byron and Lord Melbourne.

Byron's case was the talk of the town for months and has been, at intervals, the subject of heated controversy ever since. We know the rights of it fairly well now; but though nobody knew them at the time, everybody discussed the case passionately.

What must have been as obvious then as it is now is that an amicably arranged divorce was the one solution of the difficulty which could possibly repair the miserable mistake which had been made, and give Lord and Lady Byron—more particularly the latter—the chance of finding separately the happiness which they had failed and were sure to continue to fail, *pace* the Bishop of Durham, in partnership. The recent revelations throw a still more scandalous light upon the story.

If mere adultery had been admitted as a ground for a divorce, Lady Byron could easily have got one—she might have had a large choice of interveners. To get one, as the law stood, it would have been necessary for her to prove not only adultery but incestuous adultery; and she had to be satisfied with a deed of separation because she shrank from appearing in the witness box and swearing that her husband had been guilty of criminal intimacy with his sister.

Whether she could have proved that charge in a court of law nobody knows, though most people, in the light of evidence lately published, believe it to have been true. She withdrew it, though she

revived it long afterwards, in conversation with Harriet Beecher Stowe, because Byron refused to sign the deed of separation unless she did so. But that does not affect the argument. The relevant point is that we have here a case, widely discussed, which proved to the world that, under English law, an aggrieved woman could not escape from an intolerable situation without facing an intolerable scandal.

Probably Byron, as well as his wife, would have welcomed a divorce, if he could have obtained one without this scandal; and if he did want one, then it may well have struck him as strange that, by ecclesiastical law, divorce was offered, so to say, as a bad conduct prize to husbands whose delinquencies had been abnormal: logical consequence, though it was, of the ecclesiastical view that divorce, if accorded at all, should be accorded not as a remedy for the relief of the unfortunate, but as a punishment for the sins of the unfaithful. He did not get one, however; and Lady Byron suffered in silence until she met Harriet Beecher Stowe.

The Honourable Mrs. Norton, whose case also made a noise in the world, and brought the injustice done by the English divorce laws into still clearer relief, did not suffer in silence.

Mrs. Norton was Richard Brinsley Sheridan's grand-daughter. Her husband, who was Lord Grantley's brother, was a barrister and a Member of Parliament. He was bad-tempered and violent; she was hot-tempered, and had "a tongue with a tang". Dissensions soon occurred. It must have been evident to both of them, before the honeymoon was over, that there was little chance of their getting on well together. She had political friends, however, whose influence could be made useful.

Lord Melbourne, then Home Secretary, was one of them. He made Norton a police magistrate; and that, though there had been previous bickerings, was the real beginning of the trouble.

Melbourne was not a statesman specially distinguished for austerity. He had figured in a divorce suit and been cast in damages on account of his relations with Lady Brandon; and he was not yet quite fifty. When, therefore, after bestowing his welcome patronage on George Norton, he fell into the habit of dropping in to see Mrs. Norton at Storey's Gate, in the afternoon, on his way to the House of Lords—Mrs. Norton being one of the most beautiful women of her generation—the tongue of calumny began to wag.

It wagged quite unreasonably, for nothing really improper or compromising was happening.

Lord Melbourne's marriage had been an unhappy one. His wife, Lady Caroline Lamb, had first been unfaithful, and had then gone mad. He was now a widower and a lonely man to whom women's sympathy meant a great deal. Mrs. Norton was a neglected wife, with sympathy at her disposal, seeing that no ties of sympathy united her to her husband. She unquestionably filled a vacant place in Melbourne's life, and he, no doubt, filled a vacant place in hers. Sentiment, one cannot doubt, entered into their relations—sentiment always does enter into such relations. But that was all. Whatever might have happened if things had gone on longer, there is no reason to suppose that the boundaries of friendship and circumspection had been overstepped when her relations with her husband became strained.

There were acts of violence on his part, followed by temporary reconciliation. She did not exactly

mend matters by writing and publishing a novel in which it seemed to many of her readers that she was ridiculing his peculiarities. There was a day when she, having quarrelled with him, locked him up in the dining-room, and he, having escaped from internment there by way of the window, followed her upstairs to retaliate, and upset her writing-table. Eventually she bounced out of the house, vowing that she would never return; and he took the first step towards a divorce by starting proceedings against Lord Melbourne for damages on the ground that he had seduced his wife's affections.

Jealousy may not have been his only motive for doing so. Many people believed at the time that his action was a move in the political game, prompted and paid for by Tory wire-pullers who wanted to discredit Lord Melbourne. However that may have been—and nothing can be proved—Norton was laughed out of Court.

He had not only condoned, but had encouraged, the appearance of intimacy on which his charges were based, having, in his desire to secure Melbourne's patronage, taken his wife to see him and left her with him. His only witnesses were servants who admitted, under cross-examination, that they had been discharged for misconduct. The letters which he put in evidence were so irrelevant to the issue that they are believed to have suggested the love letters about the warming-pan and the chops and the tomato sauce which Dickens introduced into the case of Bardell *versus* Pickwick. The jury consequently pronounced for the defence without leaving the box; and the venom of the disappointed Tories could express itself only, as it did in Lord Malmesbury's Diary, by the remark that, so far as one could see, the trial had shown only that

"Melbourne had had more opportunities than any man ever had before and had made no use of them".

So far as his reputation was concerned, that, perhaps, was all that mattered; but the result of the trial left Mrs. Norton's position a hard one. She had not been a party to the suit, and she found herself still legally bound to the man whose cruelty had culminated in the bringing of false accusations against her. The law did not allow her to divorce him, though she knew, and could have proved, that he was unfaithful. Her separation from him, being her own act, deprived her of any right of access, save by his permission, to her children. Moreover, as there was no Married Women's Property Act on the Statute Book in those days, her literary earnings, which were substantial, for she was a popular novelist, could, at any time, be seized by him or by his creditors, who were numerous.

Her case was not an isolated one. Many other women in the country had grievances equal to hers —grievances which they endured in silence because the public took no interest in them. She did not suffer in silence. The public took an interest in her, and she had a fluent and caustic pen. So she wrote pamphlet after pamphlet, drawing attention to her wrongs and demanding the amendment of the law; and we find passages in her letters from which it is clear that she was well aware that her case was not unique, but that she had fellow-sufferers. A reference, in a letter to Mary Shelley, to the affairs of Mrs. Hemans, whose *Life* by H. F. Chorley she had been reading, is worth quoting as a proof of that:

"The very vague manner in which he mentions the husband going to Italy for his health, and her remaining in England because of her literary avocations, makes me

almost smile. Fancy any woman—and more particularly such a woman—staying to print poetry while her husband went to die in Italy. The thing is absurd. One would not do it even by a husband one did not love."

The obvious implication being that Mrs. Norton believed Mrs. Hemans' case to be yet another case of a deserted wife for whom the law provided no remedy.

But that is a side issue. Very little is really known about Mrs. Hemans' matrimonial troubles. The point to be noted here is that Mrs. Norton's own case having made a great noise in the world, and having involved a Prime Minister, and her friends in Society, in both the political and judicial worlds, being numerous, her writings on the subject were read and exercised influence.

She was never reconciled to her husband. Her quarrel with him was revived and renewed and protracted for many years. Thanks to a new Act of Parliament, passed in 1840, she found herself entitled to claim access to her children if she could prove that her conduct was, and always had been, above reproach. She asked Abraham Hayward to help her to establish her claim. He went to see Lord Melbourne on the subject, and has written an account of the interview:

" 'So', was the abrupt address, 'you are going to revive that business. It is confoundedly disagreeable.'

" 'You know, my Lord, that Mrs. Norton can't live without her children'.

" 'Well, if it must be done, it must be done effectively. You must have an affidavit from me. The story about me was all a d—— lie, as you know. Put that into proper form and I'll swear it.' "

And even that was not the end of the matter. Other quarrels occurred subsequently; and, in

the course of one of them, George Norton exercised his right to lay an embargo on his wife's copyrights. The story of quarrels is too long and intricate to be repeated in detail. Fifteen years after Lord Melbourne had sworn his affidavit, Mrs. Norton was still pouring out her pamphlets and insisting that her case was not exceptional.

"Well I know", she wrote, "how many hundreds, infinitely better than I—more pious, more patient and less rash under injury—have watered their bread with tears. My plea for attention is that, in pleading for myself I am able to plead for all these others. Not that my sufferings or my desserts are greater than theirs, but that I combine, with the fact of having suffered wrong, the power to comment on and explain the cause of that wrong, which few women are able to do. For this, I believe, God gave me the power of writing. . . . To this I devote that power. I abjure all other writing till I see these laws altered. . . .

"Meanwhile my husband has a legal lien on the copyright of my works. Let him claim the copyright of this."

That in the form of an Open Letter to the Queen, at a time when divorce reform was, at last, in the air. Lord Brougham commented on it:

"It is as clever a thing as ever was written, and it has produced great good. I feel certain that the law of divorce will be much amended, and she has contributed greatly to it."

CHAPTER XV

Royal Commissions of 1844 and 1853—Stories of Hard Cases, Reports and Recommendations.

THANKS to Mrs. Norton's hard case and eloquent pamphlets, and Mr. Justice Maule's sarcastic judgment, things were at last beginning to move; but these were not the only forces making for the improvement of the divorce laws.

The Ecclesiastical Courts had become unpopular in the country. It was felt that they had been allowed to take too much upon themselves in a great many matters, and that it was time for their powers to be curtailed; and we consequently find the subject cropping up in the report of certain evidence given, in 1844, by Dr. Lushington, who had had charge of Lady Byron's interests in her dispute with her husband, before a Select Committee of the House of Lords.

Divorce was not the main matter which the Committee was charged to consider. It was almost accidentally that it came under review; and it cannot be said that the accounts of the proceedings show any wide-spread or passionate demand for divorce law reform. But Dr. Lushington did speak about it, and made, calmly and dispassionately, a good many points which drew attention to the need for it.

His principal point was that many of the people who wanted divorces, and were legally entitled to them, had no chance of obtaining them because

they cost too much. Not only they, but their children also, might, he said, suffer grievous wrong as the result of that injustice; and the infliction of that injustice unquestionably led to an increase of immorality. Here are two pertinent passages from the evidence in which he expressed these views:

1. "Supposing the case to occur at an early period of the cohabitation between the husband and his wife, and that they are both of them early in life, it is next to impossible to suppose, in the present state of society, if you deny to them the power to dissolve the marriage tie, but that they will live in habitual indulgence of practices which are altogether immoral.

2. "Where, in the Courts of Doctors' Commons, we are under the necessity of refusing a separation by reason that both parties are to blame, or where there has been something in the conduct of the husband which does not entitle him to it, it follows, almost as a necessary consequence, in the present state of society, that both parties have led an immoral life afterwards."

There was, and could be, no answer to that—no answer, at any rate, which did not imply that the maintenance of ecclesiastical authority was a matter of more moment than the improvement of public morals. It anticipated by more than half a century the depositions of many witnesses before the Royal Commission, and notably that of Sir John Macdonell, when he said: "It cannot be right that men and women of twenty or twenty-one years of age should be separated for life and be debarred from marrying." It was followed, supplemented and illustrated by the evidence of Lord Brougham, who spoke strongly on the injustice which the state of the law did to women, and told

the Committee the full story of a hard case of which he had been given particulars.

It was the case of the mistress of a boarding-school for girls who had "been separated for many years—above twelve—from her husband in consequence of misconduct and repeated acts of adultery on his part". She had started her boarding-school in order that she might be able to earn her own living in an honourable and useful calling, and she had prospered.

"But," Lord Brougham continued, "during the whole of the time she has had this husband entirely to support. She wishes to do as much as she can for him, notwithstanding his conduct. Nevertheless he is not satisfied with what she can do, and he is by law entitled to the whole of her property; everything she makes by her labour being his, because she is his wife, though separated . . . He is now threatening to come to her. I cannot conceive a harder case.

"She cannot apply to the House of Lords for a divorce *a vinculo matrimonii*, so that she should be allowed to marry again; she cannot apply to Doctor' Commons for a divorce *a mensa et thoro*, because she has not the means; and she wrote to ask my advice and opinion, and to give her what information I could upon the subject. I told her what the expense would be, and what the result would be; namely, that her money would be still her husband's in case of her death."

It is the sort of story which leaves one wondering what the Church is for—and what Bishops sit in the House of Lords for—if the laws which permit such things to occur provoke no ecclesiastical remonstrance. Things were bound, however, to move before long when such stories were told, and such comments

were passed, in Parliament; and presently they began to move. It was not, of course, the Bishops who started the movement—that would have been too much to expect; but they were, at any rate, powerless to prevent it even in an age in which episcopal opinion was not only regarded as "news" by journalists but was also taken very seriously indeed by a vast number of people; and so it came about that, in 1853, a Royal Commission was appointed to enquire into the subject.

No Bishops sat on that Commission. The question was regarded as one primarily for lawyers. The Commissioners appointed were Lord Campbell, Lord Beaumont, Lord Redesdale, Dr. Lushington, and Messrs. Pleydell Bouverie, Spencer Walpole, and William Page Wood. Their report marks a notable advance in the history of the subject. Many of the points which it raises have already come under consideration in these pages; but, as the present divorce laws of England are largely based upon it, a brief summary of its contents must be given, even at the risk of repetition.

The Reformation evidently seemed a more important matter to the Commissioners than to the Bishops. Ignoring the Early Fathers, the Pope, and the Council of Trent, they began with an account of English legislation on the subject from the time of the Reformation onwards. They gave their reasons—some of them have already been given in this work—for holding that "from the year 1550 until the year 1602, marriage was not held by the Church, and therefore was not held by the State, to be indissoluble"; and they pointed out—another point already made in this work—that the change came when Archbishop Whitgift, "upon the advice of divines held that adultery was only a cause of

divorce *a mensa et thoro*". Then comes this double slap at Roman Catholic laxities and Protestant rigours:

"The doctrine of indissolubility was thus not only re-established, but it operated in this country with a rigour unknown in Roman Catholic times; the various fictions and devices in the shape of canonical degrees and alleged pre-contracts, which then afforded so many loop-holes of escape from its severity, having, each and all, been put an end to at the Reformation."

Which was their way of saying—what has been said in an earlier chapter of this work—that the Reformers had built, not better, but worse than they knew, and, though their intention was to make divorce easier, had, in fact, made it more difficult.

That point firmly established, they came to the story of the revolt of the important people: not important people like Milton, who was important only because he was a man of genius and had nothing to say against his wife except that her idiotic conversation was an intolerable nuisance, but great noblemen, like the Lord Roos, already mentioned, who had the strongest objection to seeing their titles and estates pass to the children of their adulterous wives' paramours, and wanted legitimate heirs.

They show us, therefore, how and when and why the High Court of Parliament took the matter in hand for the benefit of these important people. They tell the story of Lord Roos's case in full, relating how, as has already been mentioned, a special Act of Parliament was passed, setting him free to marry again in the hope of obtaining an heir, thanks largely to the support of Charles II, who desired a precedent by following which he

might divorce Catherine of Braganza and obtain an heir by another wife, to the discomfiture of his brother, the Duke of York.

Then they passed to another case: that of the Earl of Macclesfield, whose Countess, after she had been separated from her husband for ten years, became the mistress of Lord Rivers and the mother of the poet, Richard Savage.

That was a very bad case. The misconduct of the Countess had been so flagrant that her son, when he grew up, was paid a pension of £200 a year in consideration of his undertaking never to say anything about it; and the case has a special interest because Parliament dissolved the marriage in spite of the fact that the Spiritual Court had refused the petitioner a decree of separation. "It would", Parliament held, "be an unreasonable hardship upon him that the standing law which is designed to do every man right, should, by the rigour of the letter, be to him the cause of the greatest wrong, and that, for his wife's fault, he should be deprived of the common privilege of every freeman in the world, to have an heir of his own body."

And thus we see Parliament holding, in agreement with Saint Paul, but in opposition to the ecclesiastics, that "the letter killeth but the spirit giveth life".

That was in 1697. In 1700 Parliament gave the Duke of Norfolk a divorce from his Duchess in similar circumstances and for practically the same reason—because he was an important person who wanted an heir and could not otherwise obtain one; and then the Report, after mentioning another case of the year 1701, proceeds to show us how much—or, rather, how little—this revival of divorce by Parliament amounted to:

"By these means the right to obtain a divorce *a vinculo* was definitely established. It was established, however, in the rudest and most inconvenient manner; for the proceeding was a judicial one by a legislative process, and it had all the inconveniences which necessarily result from the discussion of such a question in a mixed and popular assembly. At first only a few divorce bills were passed—not more than five were carried through Parliament before the accession of the House of Hanover. From 1715 to 1775 their number was sixty, that is to say, they averaged about one a year. From 1775 to 1800 they had increased to seventy-four, that is to say upon an average to about three a year; and from 1800 to 1852 they amounted to 110. . . . Several were without any previous verdict at law; for no standing orders of either House of Parliament required the institution of these Parliamentary proceedings until the year 1798."

That is another important date. In 1798 Lord Chancellor Loughborough drafted, and Parliament accepted, a number of resolutions which regularized proceedings for divorce. From that time onward the rule was that no application must be made to Parliament for a divorce unless an ecclesiastical court had already granted a separation, and that the petitioner for divorce must attend the House in person in order to be examined on his case, so that there might be no connivance or collusion.

Another rule, agreeable to the ecclesiastical mind, and probably due to ecclesiastical suggestion, was subsequently introduced: the rule that every Divorce Bill must contain a clause forbidding the marriage of the offending parties. But that provision was a failure. Though the clause had to appear in the Bill, there was nothing in the rule

to prevent it from being struck out in Committee; and that was what invariably happened to it.

There we have, in rough outline, the history of our English divorce laws from the Reformation to the time when this Royal Commission sat; and we may as well also have before us the Commissioners' summary of the legal principles which they found to be governing the proceedings of Parliament in the matter:

"It [a divorce] may be obtained, almost as a matter of right, at the suit of the husband, when the wife is convicted of infidelity, and the conduct of the husband is irreproachable. But it cannot be obtained at the suit of the wife, except in cases of aggravated enormity, such, for instance, as incestuous intercourse with the wife's relations, which precludes the possibility of future reconciliation. In four cases of this description Parliament has interfered. Unless, however, there are circumstances of aggravation, constituting an exception to the general rule, it has always declined to do so. Two propositions may, therefore, be affirmed. First, that the wife has no title to ask for a divorce *a vinculo* when she is aggrieved only by adultery; and secondly, that the husband, aggrieved only by adultery, can demand, as it were, *ex debito justitiæ* (as a legal right), a divorce *a vinculo*, unless his own conduct has been censurable."

Such was the law, and such was the practice, at that date. Few people will nowadays deny that it was an unjust law and an inconvenient practice. But nobody had ever actually laid down the law, which had evolved, together with the practice, in the course of a long struggle between the mediæval prejudices of ecclesiastical minds and a nascent common sense, and sense of justice, which found

only imperfect expression in a Parliament in which women neither sat nor were represented. The battle was now renewed; and in the recommendations made by the Commissioners we see common sense, and the sense of justice, winning, as it were, an affair of outposts, and gaining a little ground but not venturing to advance very far.

They found little fault with the law, but were far from satisfied with the machinery provided for its application and administration. The law, they felt, might quite well remain pretty much what it was; but the legal machinery ought to be amplified, simplified and cheapened.

There was one reform, indeed, for which they pressed. In the case of cruelty, as well as of adultery, they considered the right to a separation (but not a divorce) ought to be made absolute on the ground that, as they put it, "a reasonable apprehension of danger to life, limb or health renders it impossible to discharge the duties of married life" and that "the duty of self-preservation must obviously take precedence of the duties of marriage which are secondary both in commencement and obligation". But that was as far as they were prepared to go. They expressed disapproval of either judicial or voluntary separations on such grounds as "mutual dislike, incompatibility of temper, neglect, severity and repeated provocation".

On that branch of the subject they spoke with great emphasis and unction. Husbands and wives who merely lived cat-and-dog lives had better, they thought, be compelled to continue to live together on the chance that they might learn to "soften by mutual accommodation the yoke they know they cannot shake off". The idea that a mutual desire to separate might be the best of all reasons for

separating, and that cruelty might result from the refusal to accord it unless an act of cruelty was committed, simply did not occur to them. Laymen though they were, they remained to that extent in the clutch of ecclesiastical prepossessions.

Not separation, however, but divorce was the principal question before them; and we find the fact that women had, as yet, no voice in legislation, very clearly reflected in their views.

Adultery, they maintained, in opposition to the majority of the ecclesiastics, ought unquestionably to give a husband the right to divorce his wife, but they added that it ought, on no account, to give a wife the right to divorce her husband. On that branch of the subject they quoted Dr. Johnson's remark that "the difference between the adultery of the husband and the adultery of the wife is boundless", and endorsed the opinion of Lord Chancellor Brougham that " it should be a case extraordinary in its enormity to entitle the female to such relief", fearing, as they said, that the extension of this right to women "would lead to all the evils of voluntary agreements for terminating the union".

"Such an opportunity," they proceeded sententiously, "with the ill-disposed would not be lost; should it be conceded there is reason to apprehend that, in many instances, the husband would wish for a second connection in order to get rid of the first".

It is a queer contention. Its underlying assumption appears to have been that most people in England wanted divorces, but that only a few people ought to be allowed to get them. It led up to a still queerer conclusion: that no marriage ought ever to be dissolved, if both husband and wife desired, and had given grounds for, its dissolution but

that the intimacy which they were agreed in finding repugnant must be forced upon them in the interests of true religion and sound morality. This is how they put it:

"When both parties," they represented, "are in the same guilt, neither can claim the vindication of a law which each has broken, nor reasonably complain of the breach of a contract which each has violated. When one of them has connived at the guilt of the other, that connivance involves criminality, if it be more than mere negligence, overconfidence and dullness of apprehension—if it amounts, in fact, to consent, acquiescence, or intentional concurrence; and, therefore, in point of law, as well as in point of morals, it bars relief on account of adultery which itself has occasioned or allowed to take place."

The Commissioners, that is to say, wished to apply, formally and specifically, to the divorce laws the principle that those who seek legal remedies must come into court with clean hands. We see there the legal bias co-operating with the ecclesiastical bias; and we also see the difficulty which the lawyers as well as the ecclesiastics found in regarding a divorce suit in any other light than that of an attempt to punish an offender and redress a grievance.

It seems not to have occurred to the Commissioners that a wife who had strayed from the path of virtue because her husband had been unfaithful to her, or been cruel to her, or deserted her, might be relieved if he divorced her and grateful to him for doing so. They pictured her, on the contrary, clinging to him as the drowning man clings to a straw, and they, therefore, recommended that lapses from virtue on his part should be recognized as what are styled

"pleas in bar" to his suit "on what ground soever the relief might be sought".

At the same time they did propose certain reforms. They were strongly of opinion that the existing methods of proceeding for divorce were more difficult, expensive and complicated than they ought to be, and they proposed that "a new tribunal shall be constituted to try all questions of divorce," and that "all matrimonial questions which are now determined in the ecclesiastical courts shall be transferred to the same tribunal"; but they did not reach even that conclusion quite unanimously. There was a Minority Report, signed by Lord Redesdale—*Athanasius contra mundum*—who stood stoutly for the view that, as divorce was a bad thing, though it could not be altogether forbidden, it would be better not to extend to the poor the privileges which it had been found impossible to deny to the rich.

"In determining this question," he wrote, "it is our duty to enquire whether the present state of the law is felt as a grievance—whether it is generally complained of. It is a remarkable fact that, notwithstanding the prejudice which might naturally arise among the middle and industrial classes from such divorces being open to the rich and denied to themselves, there has never been any popular demand for a change in the law. I cannot think that we are justified in forcing such a change on those who do not ask for it, and particularly as the present state of the law, as it effects them, has answered so well for their general happiness and morality."

But that was nonsense. It would have been difficult to pack more nonsense into so short a paragraph. The whole argument is based upon the

fallacy known to logicians as *petitio principii* or "begging the question".

There had been no evidence before the Royal Commission to show—and the argument required that premise—that the people who could not afford to be divorced were either more moral or happier than those who could. The Majority Report did not propose, as Lord Redesdale's strictures on it suggested, to "force" divorce upon anybody who did not want it. Nor was it true that there had never been any popular demand for a change in the law; for it was precisely because of the existence of such a demand that the Royal Commission had been appointed.

The number of people who demanded it had never, no doubt, been large enough to stir up a demand comparable with that for the repeal of the Corn Laws. The demand for easy divorce had never been as widespread as the demand for cheap bread. But there had been, among those who did feel the need for it, as we saw in presenting the story of Mrs. Norton and her husband, no inconsiderable agitation.

Ministers were aware of that; and it was, therefore, on the Majority Report that they decided to act

CHAPTER XVI

Divorce Bills of 1853 and 1857—The former withdrawn, the latter carried—Summary of Speeches by Lord Lyndhurst and Bishop Wilberforce—Wilberforce's Threats to Clergy who marry Divorced Persons.

It was in 1853 that our first Royal Commission on the divorce laws reported. The Government adopted its Report, making only a few reservations, and those of no great importance. A Bill based on its recommendations was, in the same year, introduced into the House of Lords by Lord Chancellor Cranworth.

He was a Protestant who did not mind offending Roman Catholics, and he had mastered the history of the subject. Consequently he spoke with contempt and scorn of the Roman Catholic dogma that marriage, being a sacrament, was indissoluble, and even more scornfully of the ingenious devices by which the awkward consequences of that dogma so easily could be, and so often had been, evaded. "What was called pre-contract with another person" was one very useful loop-hole. "Consanguinity or affinity prohibited by canon law" was another.

"So far," Lord Cranworth said, "was the latter objection carried that if the persons united in marriage were cousins in the eighth degree, the marriage could be set aside as being in the nature of an incestuous marriage; and it is stated by Lord Coke that in one pre-eminently absurd case the marriage was annulled because the husband had

stood godfather to the second cousin of his wife. Such were the various ways in which the absolute inviolability of marriage was evaded."

It was a good beginning. The ecclesiastical jugglery to which Lord Cranworth thus drew attention, if not indefensible, at any rate had no place in a realm in which the Bishop of Rome had no jurisdiction and Roman Catholics had so long been regarded as persons unfit to be allowed to vote. It had been one of the causes of the Reformation, and, at the time of the Reformation, had been expressly repudiated by all the Protestant divines, including the Archbishop of Canterbury. What, then, could be more reasonable than that aggrieved husbands in Protestant England should be given the right to secure by legal process, and by honest and straightforward means, the relief which aggrieved husbands—and some husbands who were not aggrieved—had been able to obtain in Roman Catholic countries by favour, perjury, bribery and corruption ?

Lord Cranworth, however, though a good Protestant, was not a very radical reformer. He saw no reason for giving the same relief to injured wives unless the adultery of which they complained had been aggravated by either bigamy or incest, his reluctance to accord it being thus explained :

"*Prima facie* that seems a very unjust distinction ; but observe what the want of it would lead to. If adultery on the part of the husband is to entitle him to a divorce, inasmuch as the husband—which may be bad morality, but it is the fact—suffers little on that account in the opinion of the world at large—for it is notorious that, while the wife who commits adultery loses her station in society, the same punishment is not awarded to the husband who is guilty of

the same crime—he may, without any great sacrifice on his own part, but merely by being a little profligate, and multiplying his acts of adultery, be able to effect his object."

A little profligate!

There was an outcry against the expression even in those days. There would be a much louder outcry if any Lord Chancellor used it now. Lord Cranworth judged it expedient to say that he had never used it, but had been misreported. It appears in *Hansard* however, and it seems to reflect the general opinion of the time: the general belief that infidelity on a man's part was a venial fault and that sensible women not only should, but usually did, turn blind eyes to a little of it, being convinced that, though a faithful husband was better than an unfaithful one, even an unfaithful husband was preferable to no husband at all.

It may have been a correct view—a correct estimate of the majority of early-Victorian women, few of whom, in the middle classes, enjoyed any sort of economic independence or knew of any but humiliating and disagreeable ways of earning their own living. Marriage was to most of them what the shop is to the shopkeeper, what his trade is to the mechanic, or what law, physic and divinity are to barristers, doctors and clergymen. A bad marriage, like a bad practice or a bad business was, at the least, a stand-by—a pecuniary resource of which it would be extremely inconvenient to be deprived.

That was the substance of the argument: that it was better for wives that it should not be possible for their husbands to provoke or taunt them into divorcing them; that it was better for them, in short, to bear the ills they had than fly to others

that they knew not of. It carried weight and was not seriously contested in the debate on this particular Bill.

The Bill of 1853, however, never reached the House of Commons. It was hung up in consequence of the outbreak of the Crimean War, which gave Members of Parliament other things to think about; and it was not until Lord Cranworth introduced another Bill in 1857—very similar to the previous one, though not quite identical with it—that issue was definitely joined on the question. And this time the most effective champion alike of the case for divorce and of women's rights to equality of treatment with men in the divorce courts, and before the divorce law, was Mrs. Norton's friend, the aged Lord Lyndhurst.

He felt obliged, of course, like Lord Cranworth, to sweep the ecclesiastical arguments out of the way before presenting the arguments based upon the actual facts of life.

He had, in the debate on the previous Bill, dealt with the arguments against divorce based upon the Scriptures, contending, in reply to them, that if Christ had spoken on the subject as a legislator, He would presumably have made it clear that He was doing so, and would not have left His meaning so obscure that equally intelligent and devout divines could wrangle with each other about it. He had also, on the same occasion, dealt with the arguments based on the observations of the Early Fathers by pointing out that they contradicted each other. He now further cleared the air by disposing of the argument based upon the ruling of the Council of Trent. "It was a Council", he said, "which was anxious to extend the powers of the Pope and to enable the Emperor of Germany to crush the

Protestants and destroy the Protestant religion"—a thing which he had signally failed to do. It ill became England, as a Protestant country, to bow to the rulings of that Council.

The next contention to be faced was that of Lord Redesdale: the contention that though the occasional divorce of a nobleman by Act of Parliament must be tolerated because it could not very well be prevented, the accordance of this privilege of the aristocracy to the middle classes and the lower orders would demoralize the whole community. It was, he argued, the refusal of that privilege which was demoralizing.

"A man finds his wife committing adultery; he has no remedy; he cannot apply to a court of justice to dissolve the marriage; he therefore continues to live on with her, committing acts of brutal and degrading violence on her—or he turns her out, and she goes to live with the adulterer. What, he asked, was the effect of such a scene upon the lower orders of the people? Or, again, if he do not drive her forth, he acquiesces in her shame and guilt; the adulterer comes, from time to time, to his residence; he cohabits with his paramour; and what, he should like to know, could be more destructive of the morality of the lower orders? Did they mean to say—could they say—that the interposition of a court of justice, dealing justice alike to all, and dividing persons of that description, would tend to demoralize the state of society more than such occurrences as he had endeavoured to describe."

It seems a fairly complete answer to Lord Redesdale and to the common clerical doctrine, upheld so stoutly by Dr. Bell, Bishop of Chichester, that where proceedings for divorce are taken in consequence of

adultery, the remedy is an aggravation of the disease and a second sin is added to the first. Having given it, Lord Lyndhurst admitted that a woman's case was, in some ways, different from a man's, seeing that her adultery might, whereas his could not, introduce a spurious heir. But he insisted that the conclusion commonly drawn from those premises did not properly follow from them :

"Was that the true and logical mode of argument —to select one particular fact in a case, and to say that therefore the whole case differed from another to which, with this exception, it was exactly similar ? Suppose, as not infrequently happened, that a man lived in open, flagrant, notorious adultery without disguise, without limitation in point of time—perhaps bringing his paramour home to his own wife, insulting her in this way, and treating her with great harshness and even cruelty—was he to be told that, in such a case, his wife was to be left without a remedy ? Was not that such a state of things as to entitle the wife to a divorce ?"

Another point. Why, he next asked, should not similar relief be given to the wife whose husband deserted her, even if it was, as it so easily might be, impossible for her actually to prove the adultery which it was so reasonable to presume ? Surely the arguments for giving it to her "arose out of the very nature of the contract of marriage".

"What were the objects of the marriage ceremony? They were three in number. The first was the procreation of children, and training them up in the love and fear of God. That object was directly defeated by such acts as he had referred to. The second object was to guard against sin ; but that was not only defeated by the desertion of a wife, but it usually led to the commission of sin. The

third object of marriage is the comfort, society and mutual protection of the husband and wife; but that was equally defeated by such acts as he had mentioned. Thus the whole objects of marriage were equally defeated by such acts as he had mentioned; and in such circumstances he would ask whether it was just that a woman should be bound by a contract the whole objects of which have been defeated by the act of her husband?"

The case could hardly have been better presented. The shallowness of the clerical position could hardly have been more effectively exposed. The clerical definition of the purposes of marriage had been taken, and it had been demonstrated that it was precisely in order to secure some approach to their fulfilment in certain hard cases which notoriously occurred that adequate divorce laws were needed.

No answer based upon common sense was possible. The only possible basis for a reply was superstition—such superstition as seems to have led some ecclesiastical extremists to the conclusion that they have been placed in charge of everybody's sexual relations and that it is equally sinful for a man and a woman either to sleep together or to abstain from doing so without their permission and approval; and though several of the Bishops, as might have been expected, were superstitious, Dr. Tait, the Bishop of London, fortunately was not.

Like Lord Lyndhurst, Tait refused to defer to the authority of the Early Fathers on the very reasonable ground that "there was hardly any subject on which a whole string of the Fathers could not be brought in on one side and a whole string on the other"; and he maintained, not less

reasonably, that the "general statement" contained in scriptural texts must not be regarded as never admitting of qualification.

"If they were told," he said, "that all children should honour their parents, it did not preclude instances of parents being wholly unworthy of the honour of their children. If they were told that there should be no separation between husband and wife there might still be cases of such foul iniquity as to effect the utter disruption of the marriage tie. . . . It was, he was prepared to maintain, the universal opinion of Protestant Churches that in some grave cases marriage might be dissolved, and in those cases he thought it better that the dissolution should be pronounced by such a Court as was proposed by this Bill than by private laws. . . . An opportunity now offered of satisfactorily settling the question upon an intelligible and religious basis."

There was robust common sense in that—not quite as much of it, perhaps, as the circumstances of the case required, or as some of the lawyers, who had more practical knowledge of life, displayed, but more of it than usually appeared in the utterances of early-Victorian Bishops.

Tait had a healthy mind, trained, to some extent, in affairs, though not over-stocked with original ideas; and he was not a man to overlook the obvious. The possible changes and chances of the amatory life and their possible consequences may, perhaps, have been brought home to him when, as headmaster of Rugby, as is related in Charles Pearson's *Reminiscences*, he saw the future author of "Guy Livingstone", then a member of his own VIth Form, making love to Mrs. Tait, under his eyes, at his own dinner table, and carrying off, as a triumphant trophy, the flowers which she

was wearing in her corsage. At all events, whether that reminiscence weighed with him or not, he had sense enough to see that a Protestant episcopate had no business to talk and behave as if it had forgotten all about the Reformation; and he took a much broader and humaner view of the matter than Bishop Wilberforce of Oxford—the suave prelate commonly known to his contemporaries as "Soapy Sam".

It is hard to say whether Wilberforce should be classed as a Protestant or not. Perhaps he himself could not have said. Once, not being in his usual saponaceous mood, he declared that the doctrines of the Church of Rome, to which his brother had seceded, "stank in his nostrils"; but he showed much more sympathy with the Romanist views than with those of Cranmer and the Reformers when he figured as the life and soul of the opposition to the Bill and derided Lord Lyndhurst as a shallow person who had been "brushing up his ecclesiastical lore", though Lyndhurst unquestionably knew his ecclesiastical history a vast deal better than Wilberforce knew his biology when he attacked Darwin at the Oxford meeting of the British Association and provoked Huxley to the remark that he, for one, would rather be descended from an ape than from a Bishop.

Wilberforce not only opposed the second reading of the Bill. He also moved, or supported, innumerable amendments designed to make it as ineffective and inoperative as possible.

Though he seemed quite unmoved by the sufferings of men and women whose unhappy marriages made life a burden to them, destroying their health, shattering their nervous systems, paralysing their power for usefulness in the world,

and shortening their lives, he was consumed with pity for the feelings of poor clergymen who, the Established Church being, among other things, a branch of the Civil Service, might find themselves required to celebrate marriages of which they disapproved, though, as he knew perfectly well, they had long been satisfied to celebrate, without any qualms of conscience, the marriages of children too young to know what marriage meant. He also desired to "guard the morals of the people" by giving to "the grave sages of the law" the right of "inflicting some positive discreditable punishment such as imprisonment on the adulterer".

He wanted, that is to say, to be allowed, first to decide what, in sexual matters, was a sin, and then to require the law to treat sins as crimes; but he did not get his way about that. Lord Campbell withstood him, pointing out that it really seemed unreasonable to tell injured husbands, who might be more humane and chivalrous than the Bishops, that, if they took steps to get rid of unfaithful wives, there was grave risk that their action might cause the offending ladies to be sent to consume the bread of affliction and the water of affliction in one of Her Majesty's gaols. That was a new point to Wilberforce, and he had no answer ready. The Bill passed the Lords without his remarkable amendment; and we find this entry in the episcopal diary:

"Sad the debate of last night. The division of the Bishops, and especially the Bishop of London's tone, pained me deeply. What is to be the end of it but that of a house divided against itself?"

The Bishop of Oxford was, indeed, so upset at hearing the Bishop of London talk common sense, and at his own failure to get adultery made a penal offence that, as the diary also tells us, he had to

excuse himself from going to a party at Count Bernstorff's to meet Prince Frederick William of Prussia; and he was hardly less pained by the provision inserted in the Bill that, though clergymen might, as conscientious objectors, refuse to marry divorced persons, any clergyman claiming such exemption must allow the ceremony to be performed in his church by any other clergyman who was willing to perform it.

"If," he said, "he knew of any one of these hired interlopers coming in the way he was here permitted to do, to enter a church in his diocese, he would meet him at the door with an inhibition and suspend him from his office"—a threat which he duly carried out, some years afterwards, when a curate in his diocese dared to exercise the right which the law had given him and celebrate a wedding at Saint James's, Piccadilly.

So seriously did Samuel Wilberforce take himself; so much venom was there in that soap. He may have meant no harm. He may have conceived it to be his duty to bark as an ecclesiastical watch-dog, rather than to reflect as a Christian philosopher. He may, like the Curé in Anatole France's story, have regarded thought as a great infirmity from which Divine grace had miraculously preserved the saints. For, otherwise, being capable of thought, though not addicted to it, he would have realized that the measure which he first tried to defeat and then tried to emasculate, far from destroying the Christian ideal of marriage, would, if carried and amplified, instead of being whittled down, have made it attainable by numbers of unhappy people by whom, as things stood, it could never be attained.

He was not, of course, alone in his prejudices

and his blindness. Even the lawyers, or some of them, inclined, in 1857, to the view that the law might properly concern itself with sins as well as crimes, and were disposed, like the Royal Commissioners, when widening the door to divorce, to make passage through it most difficult for the people to whom it would be most advantageous. Even from them there came no effective opposition to the strange view that, when both parties to the marriage contract had broken it, it ought to be treated as indissoluble; and that though there was a case before the country—very noisily before the country, in fact—at the time which might very well have demonstrated to all those who had eyes to see that it was precisely in the cases in which there had been, as people say, "faults on both sides" that the dissolution of the marriage could do the least harm and was likely to do the most good.

The case in question is that of the first Lord Lytton and his wife: a story which it may be worth while to re-tell, in some detail, as an interlude before we come to the debate in the Commons, for the sake of the moral to be drawn from it.

CHAPTER XVII

Bulwer Lytton and his Wife—Their Matrimonial Disputes —Divorce Unobtainable because there were "Faults on both sides"—Do Hard Cases make Bad Law ?

Rosina Wheeler, whom Edward Bulwer—he did not become Lord Lytton until some years later—made the mistake of marrying at the age of twenty-four, was an Irish girl. She was very beautiful and belonged to a fairly good family, but was quite uneducated, very badly brought up, and of a fierce, capricious and difficult temper. Their engagement was, more than once, broken off and then renewed ; and it seems that, as Earl Lytton put it in his Life of his illustrious grandfather, "in the ardour of their reconciliation they were led into contracting a tie which made marriage a necessity."

It was, at any rate, a marriage for which one can discover no other reason. Passion being its only basis, it was foredoomed to failure. Perhaps, as Earl Lytton suggests, the seeds of dissension were first sown through Mrs. Bulwer's reluctance to receive or call upon a daughter-in-law who seemed to her a most objectionable person ; but there were other factors in the case besides the mother-in-law which made estrangement inevitable.

They were, for people in their social position, rather badly off. Bulwer had to work like a literary galley-slave in order to pay his way and keep up the "appearances" to which both he and his wife attached great importance. Mrs. Bulwer neither

shared his literary interests nor had any serious interests of her own. Consequently, when her husband was over-worked, she complained that she was neglected; while he, on his part, was not unnaturally exasperated by her frivolity, her bad temper and her bad house-keeping.

The trouble did not begin quite immediately. There were, according to Earl Lytton, "six years of comparative domestic happiness", with the accent, no doubt, on the word "comparative"—years during which Bulwer was constantly remonstrating with his mother for her hostile attitude towards his wife. But there was an awkward little rift within the lute, and it was widening—the more rapidly because "Mrs. Bulwer did not care for her children and they played no part in her life". She preferred her dogs, and these naturally failed to "supply the mental occupation which she so badly needed".

Mental occupation, however, was neither the only occupation which she desired nor the only occupation in which she indulged. During a visit to Naples she "obtained consolation for her wounded feelings in the attentions of a Neapolitan Prince", and, in a short time, "persuaded herself that she was thoroughly in love"; whereupon the storm which had long been gathering burst:

"Her husband, when he discovered it, took a ridiculously serious view of the matter. He flew into a violent rage, and, in a stormy interview, upbraided his wife for her infidelity. She replied that all her affection for him was dead, and that she had given her heart to her new friend. He then brought her post-haste back to England and vowed that he would never live with her again."

Actual cause for a divorce had not, apparently, at that time been given; and if it had been given

Bulwer would have been unable to pursue his remedy—obtainable at that date only by private Act of Parliament—for lack of means. So the quarrel was partially patched up, and other quarrels which succeeded it were also partially patched up.

Husband and wife thereafter lived apart from each other most of the time, but corresponded—sometimes in terms which approached affection—and occasionally met. Each of them seems, indeed, to have made, at intervals, for a period of two years or so, attempts to effect a reconciliation; but the efforts were unavailing. Not only were their tempers absolutely incompatible, other obstacles were now beginning to present themselves. Mrs. Bulwer had taken to drink; and Bulwer "had become deeply attached to another woman who gradually acquired that place in his affections which he considered had been forfeited by his wife", and with whom he entered into "a relationship in all respects equivalent to marriage except in the legality of the tie".

He ought, one supposes, in the view of our clerical friends, to have preferred intimacy with Mrs. Bulwer in her cups to intimacy with any other lady, however sober; but the reference to his attachment to the other lady in his diary must be quoted. Written not for the world's eye but for his own satisfaction, it reveals him as a man naturally quite "exclusive in his affections" and passionately anxious, not for the loose life of a debauchee, but for a marriage which would give him all that his actual marriage, whether through his fault or his wife's, had failed to give. This is what he wrote:

"I have one comfort, though not without sore alloy. I am loved, I believe, honestly, deeply and endearingly, by one who is indeed to me a wife. It is true that there is sin in the tie, and *there* is the

alloy. But if ever such sin had excuse, it is in our case. She, lone and friendless save me—no family, no name dishonoured; and I in the flower of manhood, with a nature that demands affection as its food, utterly shipwrecked of all love at home, my heart bruised and trampled upon—and never forming this tie, till in despair of all harmony in one more lawful. And if in love itself there be a redeeming sanctity, surely it is ours—mutual honour, loyal fidelity, perfect respect, unwavering confidence.

"Had we but been married, we should have been cited as models of domestic happiness and household virtues. We have both been better since we loved each other, and I have sought to atone by more active kindliness to others for the sin that exists here."

According to Canon Hensley Henson's interesting evidence before the Royal Commission, it was Bulwer's Christian duty to love the inebriate, who preferred the Neapolitan Prince, and he could have done so if he had tried, fortifying his efforts with prayer; but he preferred to separate from her, and the deeds of the separation were settled with the help of Sir Francis Doyle and Sir Thomas Cullum, who thus recorded their opinions of the arrangement:

"The cause of the separation which has unhappily taken place between Mr. and Mrs. E. L. Bulwer is incompatibility of temper. The pecuniary terms contained in the agreement, to which Mr. Bulwer has legally bound hinself, are, with reference to the permanent means at his disposal, in our judgment liberal, and the conditions generally of the arrangement, as proposed by him, honourable to both the parties concerned."

In the settlement, in short, as in the dispute,

honours were easy; and if that had been the end of the story there would have been no need to tell it here. It would have resembled too many other stories for any fresh moral to be drawn from it. Unhappily, however, further trouble and worse scandals were to come.

Mrs. Bulwer, it must be pointed out, had not only agreed to the separation—she had demanded it. She had also expressed her satisfaction with its terms. "I beg explicitly to state", she had written to her husband, "that no illness, no want, no privation shall ever induce me to accept one farthing from you beyond the stipulated £500". But she did not keep her word.

She had, as has been said, taken to drink, and the deplorable habit was growing upon her. . . . Probably in consequence of her intemperate habits —one knows of no other reason—her mind became deranged. Her dislike of her husband developed into hatred, and the hatred became a monomania. For a while, indeed, she lived abroad, and left him alone; but, after no long interval, she returned to England, tried to extract from him the additional money which she had vowed that she would not accept if it were offered, and, failing to do so, laid herself out to make public life impossible for him by ingeniously vindictive devices which would be incredible if her adoption of them were not proved by unimpeachable testimony. A few details may be taken from Earl Lytton's *Life* and given in his words, so that no charge of exaggeration may lie:

"On one occasion a lady whom Sir Edward had never seen or even heard of, came to Taunton for the purpose of giving some lectures, and she sent a prospectus to Lady Lytton among other persons residing in Taunton, whose patronage she desired

to obtain. Lady Lytton, on receipt of this lady's card and the prospectus, immediately accused her of being a discarded mistress of her husband and a person of notoriously evil life, masquerading under a false name.

"A favourite device of hers was to address letters to her husband, the envelopes of which were covered with scurrilous and obscene inscriptions, and she sometimes despatched as many as twenty of these in one day, all duplicates, and addressed to the House of Commons, to his clubs, to town and country addresses, to hotels—anywhere, in fact, where they were likely to be seen by others. She did not even confine this particular form of attack to her husband, but sent similar letters to all his friends. . . .

"In 1851, on the occasion of the performance of Bulwer-Lytton's play at Devonshire House, in aid of the Guild of Literature, Lady Lytton wrote to the Duke of Devonshire stating that 'she would enter his house disguised as an orange woman and pelt the Queen with rotten eggs', and accusing Her Majesty of being 'the cold-blooded murderess of Lady Flora Hastings'. At the same time she wrote a longer and even more outrageous letter to Charles Dickens in similar terms. The Duke of Devonshire was consequently obliged to employ detective police to guard against this outrage. . . .

"To live with this skeleton in his cupboard was a trial requiring all the courage of endurance of one so sensitive to criticism, so proud, so shy. . . . But when the cupboard door was forced open, when the skeleton walked abroad, mocked him in the streets, insulted him wherever he [Lytton] went, shrieked at him from the daily Press, and molested even his friends and acquaintances, the trial was beyond endurance. . . .

He could not enter the House of Commons or attend meetings of the Cabinet, without the fear that one of his colleagues might hand him some obscene and abusive communication just received from his wife."

And then came the crowning outrage, perpetrated when Bulwer's appointment to the office of Secretary of State for the Colonies obliged him to seek re-election as member for Hertford.

"The election took place, not in the Town Hall, but in a field outside the town. At the moment when Sir Edward was returning thanks for his re-election, Lady Lytton arrived upon the scene. Advancing hurriedly through the crowd, she called out in a loud voice, 'Make way for the member's wife'. She then addressed some very violent language to Sir Edward, shaking her fist at him and shouting: 'It is a disgrace to the country to make such a man Secretary for the Colonies'. Her husband, overcome with shame and horror at the sight of this wild apparition, left the field. Lady Lytton then mounted the platform and harangued the assembled crowd in a very excited manner, exclaiming: 'How can the people of England submit to have such a man at the head of the Colonies, who ought to have been in the Colonies as a transport long ago? He murdered my child and tried to murder me. The very clothes I stand up in were supplied to me by a friend'. After this scene, she returned to London and took the night train back to Taunton."

That is as much of the story as we need. It must be supplemented by Earl Lytton's sane and pertinent comments:

"The only means of terminating this miserable matrimonial feud was to be found in divorce. Whatever views may be held as to the sacredness and irrevocability of the marriage tie, few, I think,

would deny that, in a case like this, the dissolution of the bond, with all the unpleasant publicity attaching to it, would have been preferable to the life-long campaign of hatred which the maintenance of the marriage entailed. But owing to the strange anomaly in the English divorce law, which refuses to dissolve a marriage where faults are committed by both the parties to it, divorce, in this case, was impossible. Either party was in a position to produce evidence sufficient to procure a divorce, but since the charges would have been mutual, the remedy which by common sense was doubly required was by law denied."

Why did the law deny it ?

Partly because so many lawyers had been the prisoners of the formula which prescribed that litigants must come into Court "with clean hands" ; but chiefly because clericalism blocked the way, and the voice of the Church, expressed through the mouths of the Bishops, insisted upon the denial of the concession, and was allowed to speak with authority on a matter about which it possessed no special knowledge, and had taken no steps to acquire any.

For it seems that Samuel Wilberforce and those churchmen for whom he spoke did actually prefer such public scandals as those described in the first Earl Lytton's *Life* to the quiet liquidation of the marriage which had produced them, did conscientiously desire to see men and women who hated each other as Bulwer-Lytton and his wife did, prevented from sleeping in any company but each other's, and did insist that, in obstructing any reform of the divorce laws which would stop the scandals and enable men and women who knew that they could never make each other happy to separate,

repair their errors and re-arrange their lives, they were fulfilling the law of Christ.

Lucretius supplies the obvious comment: *Tantum religio potuit suadere malorum*—So much mischief has been brought into the world, and kept in it, by the unreflecting piety of the devout, and so badly is the wisdom of the wise needed to repair the harm done by the good.

But the law which the devout thus glorify is, in fact, neither the law of Christ nor the law of the Church of England; and it is futile for them to attempt to defend it, as they often do when challenged and faced by such stories as that which has just been told, by the suave plea that "hard cases make bad law" and the implication or suggestion that cases as hard as that are too rare to be worth troubling about. The obvious rejoinder is twofold.

In the first place it is only for the purpose of relieving hard cases that we need a divorce law at all. In the second place the cases hard enough to call urgently for relief are not few but many, as the devout will see for themselves if they will take the trouble to turn to Appendix XXVI of the Royal Commission's Report.

That Appendix consists of one hundred letters received by the Commissioners from men and women desirous of drawing attention to their hard cases. The letters selected for publication constitute only a fraction of the letters received; and it is fair to assume that the sufferers who thought it worth while to write constituted only a small fraction of the total number of sufferers. Many of the letters are quite illiterate, but they all have the ring of truth. Some of them are from men; others from women. They all tell heart-rending stories of homes ruined by disastrous marriages, and of the

writers' inability, for one reason or another—in most cases because of their lack of means—to procure the divorces which would make genuine home-life once more possible. There are enough of them to fill a book; so one can do no more than give a few extracts. Here is the lament of a clergyman:

"I am curate in charge of this large parish, but cannot get a licence from my Bishop on the ground that I am not living with my wife when it is she who has deserted and wrecked my home after misconduct with a man. I cannot get a divorce, it being too expensive, and also the shame. The position is both anomalous and indefensible. . . . In the colonies of Australia I should have been emancipated years ago."

Here is the case of a lodging-house keeper:

"My husband deserted me four years ago and resides in Mexico. He is now living with a woman out there as man and wife. He never sends me a penny, neither does he keep his children. I cannot get my divorce simply because it is more than I can ever save out of my earnings. . . . Can you possibly help the really poor yet decent woman who could pay a little, but not the fearful and impossible sum that is required now?"

A farmer writes:

"Twenty-three years ago my wife left me, the reason being that life was too dull in the country after coming from the town. . . . I could not succeed in tracing her for many years. Eventually I found out that she had married again and had a child . . . in New Zealand. . . . I have applied to solicitors in reference to the matter, and they tell me it will cost several hundred pounds to get a divorce."

A working man writes:

"I was married in 1896, and soon after my first child was born in 1897 my wife went on the drink, she gradually went from bad to worse, got locked up two or three times and after selling up my home, eloped with a man . . . and went off to Canada, leaving me with three little children. Now I have been in my present situation sixteen years, but owing to the expense of providing for my children it was impossible for me to save sufficient money to get a divorce and am compelled to live a lonely life through no fault of my own."

Another working man writes:

"After being married ten years I took in a man lodger who completely wrecked my home. He showed a great liking for my wife, and when I spoke about it she said she would rather I went than he. I then left the house, and she left with this man and all my furniture. I got a legal separation drawn up and since then have not spoken. She has now taken my three children away from me and has got four illegitimate ones besides. Will you kindly tell me the particulars and how to arrange the divorce, and the cost, as I am only a working gardener earning £1 a week."

A commercial traveller writes:

"A few months ago my suspicions were aroused as to my wife's conduct in my absence . . . and when I finally brought the matter to a head she left me . . . with the man, whom she owned to have been carrying on with for over twelve months, and is now living with him in furnished apartments. . . . If it were a matter of a few pounds I would bring a suit against them, but at present I am out of employment caused through this trouble, so cannot think of it."

So the story goes on, one hard case following

another. The country, at that time, was eivdently full of such cases. So one naturally turns to see what the clergy were saying, through their official mouthpieces, while the Commissioners were receiving this evidence and considering it. They were, with very few exceptions, opposed to the granting of any relief whatsoever to any of the sufferers. Resolutions to that effect poured in upon the Commissioners from Diocesan and Ruri-Decanal Conferences; and these two resolutions were carried, among others, "with virtually complete unanimity" by the Upper House of the Convocation of Canterbury, Dr. Randall Davidson being then Archbishop:

"That this House opposes, as detrimental to the social, moral and religious interests of the nation, any extension of the grounds on which divorce can now be legally granted," and

"That while holding to the plain principle of justice that poverty ought not to be in itself a bar to obtaining all the protection which just laws afford, this House strongly deprecates any attempt to increase the general facilities for divorce by the multiplication of courts possessing divorce jurisdiction."

Seeing that it was only by the multiplication of divorce courts that the privilege of divorce could be extended to the poor, the second of these resolutions is one to pause over for the sake of the light which it throws upon episcopal mentality. We find what Dr. Randall Davidson calls "the whole diocesan episcopate of the province" contriving to say, in a single sentence, that even-handed justice is admirable but had better not be done and that there ought, and yet ought not, in this matter of divorce, to be one law for the rich and another for the poor; and one is left wondering whether the text of the resolu-

tion is more useful as a help to us to gauge the intelligence of the ecclesiastical magnates who framed it or as an indication of their estimate of the intelligence of the Royal Commissioners to whom they submitted it.

That point left in the air, we will return to the debates on the Divorce Bill of 1857.

CHAPTER XVIII

Debate in Commons on Divorce Bill of 1857—Important speech by Gladstone—His vain demand that women should be granted Divorces on the same grounds as men.

THE Divorce and Matrimonial Causes Bill—to give it its full and proper title—of 1857 duly passed through the House of Commons, received the Royal Assent, and became an Act. It has been, to some extent, modified and supplemented by subsequent Acts; but it forms the basis of the law now in force in England. The changes which it introduced may be summarized.

It created the Divorce Court. It substituted judicial for legislative procedure for the dissolution of marriage; and by so doing it brought the remedy of divorce within the reach, not, indeed, of "all classes", as some of its advocates boasted and some of its opponents complained, but at least of people of moderate means belonging to the middle classes —the sort of people who had agitated for the great Reform Bill. It simplified practice as well as cheapening it. Before it was carried the applicant for divorce by private Act of Parliament had been required to produce evidence of the adultery which had aggrieved him, on three different occasions before three different assemblies. After its enactment it was enough for him to prove it once in one court.

In the law itself, however, as distinguished from procedure, there was little change except in the

way of careful definition, showing exactly what the law was.

The new Act allowed a husband to divorce his wife for adultery; but it allowed a wife to divorce her husband only if his adultery had been aggravated by cruelty. It allowed a husband to make money out of his wife's infidelity by recovering damages from the co-respondent; but it accorded her no equivalent right against an intervener. It made arrangements for those judicial separations as the result of which it was almost certain that both husbands and wives would live irregular and adulterous lives. It forbade divorce altogether in the cases in which the need for it was most obvious—cases in which, as in that of Bulwer-Lytton and his wife, the infidelity had been mutual, or there were reasons for suspecting collusion, the considered view of the legislators being that marriage ought to be dissoluble only if one of the parties strongly objected to its dissolution.

The measure was debated even more fully in the House of Commons than in the House of Lords; and there, too, one finds, when one looks at the reports, that the arguments adduced on both sides were mainly arguments which most of us nowadays would regard as altogether beside the question, while many other arguments which would nowadays strike most of us as extremely pertinent, were entirely ignored. . . . So fast has the world been moving.

One finds, for instance, that in 1857 not a single speaker approached the subject from the point of view of eugenics. It does not seem to have occurred to any one of them to recognize as relevant to the discussion the existence and the lamentable consequences of venereal disease—to enquire whether

the refusal of divorce to women whose husbands had been unfaithful might not mean the ruin of their health and the birth of blind, syphilitic or feeble-minded children. The communication of a venereal disease might, indeed, as judges were subsequently to rule, afford grounds for a divorce as an act of cruelty from which adultery might be inferred; but no one then suggested that it would be better for the community, as well as for the woman and her children, that she should be allowed to get rid of an unfaithful husband and so escape the risk before the irreparable harm was done.

In the Commons, as in the Lords, indeed, most of the arguments heard were ecclesiastical arguments—those arguments which a modern eugenist would regard as red herrings trailed across the course of the debate; and the disputants in the Commons, as in the Lords, spent most of their time in pelting each other with texts of Scripture and quotations from the writings of the Early Fathers—some of them in the original Latin and Greek.

Sir Richard Bethell, the Attorney-General—better known as Lord Westbury, and as anti-clerical a politician as a Member of Parliament could in those days venture to be—the Lord Chancellor who boasted that, in one of his judgments, he had "dismissed Hell with costs and deprived the clergy of the Church of England of their last hope of everlasting damnation"—thought it as necessary as any of his ecclesiastical opponents to support his case with a dazzling array of patristic erudition. Gladstone, who opposed him with an even more remarkable exhibition of similar lore, talked at great length as if nothing—or hardly anything—were at issue in the debate except the correct interpretation of a few passages in the Bible and the

correct reading of Church history. His was a fighting speech, and his name still carries so much weight that it must be summarized.

Marriage, he took for granted, was an institution of Divine origin—an assumption obviously implying the further assumption that the account of the Creation which we find in the Book of Genesis is both inspired and literally true. Starting from that standpoint—speaking, so to say, as a Fundamentalist—he inferred that all legislation concerning marriage must follow the lines laid down by the Divine law, and was a matter, not for Parliament, but for the Church.

It shocked him beyond measure, he said, to see that Parliament, "not being to my knowledge invested with any theological authority, sets itself up as a square and measure of the consciences of men. I must confess", he added, warming to his work, "that there is no legend, there is no fiction, there is no speculation, however wild, that I would not deem it rational to admit into my mind rather than allow what I conceive to be one of the most degrading doctrines that can be propounded to civilized men—namely, that the Legislature had power to absolve a man from spiritual vows taken before God."

Gladstone, that is to say—it is well to get his position quite clear—thought the doctrines that the earth was flat and was the centre of the solar system reasonable and uplifting in comparison with the doctrine that it was open to Parliament to provide machinery for the dissolution of marriages celebrated in accordance with such solemn rites as those of the Church of England.

For him, therefore, the first—and, indeed, the only important—questions to be considered were :

What did the Scriptures say? What did Christ say? What light did Church history throw upon the nature and true meaning of His precepts, and upon the reasons why the Church's interpretation and application of them had been sometimes loose and sometimes rigid? He had considered all these questions and believed himself to have found the true answers to them; so he embarked upon a learned lecture on Church history, with a view to helping his hearers to clear their minds also, quoting the canon which says: "If a layman divorce his wife and marry another, or marry a wife divorced by another, let him be separated from the Church".

That canon, he declared, belonged to the third century of Christianity. The inference to be drawn from it was, he insisted, that up to that date the indissolubility of marriage was clearly a Christian dogma. From that time onwards, he admitted, "you do discover a tendency setting in towards latitude".

But why was that? Unquestionably it was because the Church, when it came into contact with a naughty world, lost some of its pristine purity. Nothing, it seemed to him, was more natural than that when the good Christians had to do with worldly Emperors, Prefects and other important people, like his friend the Attorney-General, "arguments drawn from the human law, from the common practice of the world, from heathen usage and tradition should, to a certain extent, leave their marks upon the rules of Christianity—happily, indeed, not so as to effect its life, but undoubtedly so as in some degree to lower its tone".

That was before the split between the Eastern and Western Churches. Gladstone proceeded to

tell the House what happened, and which Church was in the right, when that split occurred.

The Church, he explained, was less powerful in the East than in the West. There, it never succeeded in recovering its lost tone in this matter, but continued to permit divorce. In the West conditions were more favourable. There, happily, the Church fought the good fight successfully, with the result that "the law of the Church, after some struggles, remained unbroken, and it was triumphantly established that a Christian marriage, once validly contracted, ought to be indissoluble."

That was his summary, but it was not a fair one. Gladstone omitted to mention two important facts to which attention has been drawn in these pages: that it took the Church more than fifteen hundred years to effect the triumphant establishment of the principle in question and that, not only while it was being established, but afterwards also, accommodating Popes had made divorce unnecessary for important persons by their convenient readiness to declare, for valuable consideration, that their marriages had not been validly contracted. That admission would have been both disrespectful to the Vatican and damaging to his argument; so he passed on to the Reformation.

It was, as Gladstone's hearers all knew, the Reformation which made the Church of England a separate and independent ecclesiastical entity. It was, as they were equally well aware, on a question of divorce that the Church of England had definitely broken away from the Church of Rome; and there was bound to be some reference to the fact that an ecclesiastical commission had then dealt with the question under the direction of the Archbishop of Canterbury—Archbishop Cranmer.

Cranmer, if anyone, it might have been supposed, was entitled and qualified to formulate the views of the Reformed Church of England on the subject —better qualified, at any rate, than any of the Early Fathers. The Attorney-General, therefore, after dismissing the Early Fathers, had quoted him; but Gladstone would not admit that his authority was any greater than that of the Attorney-General himself. He had respected, and he had called upon others to respect, the sentiments of such people as Origen who was an Egyptian, and Lactantius who came from Asia Minor. But when he was referred to Cranmer—a mere Englishman:

"I must say that if my honourable and learned friend tells us that the personal opinion of Archbishop Cranmer is to govern our consciences contrary to the general law of Christendom and to the opinion of the Reformed Church of England itself for three hundred years, such a claim is so extravagant that he ought not to attempt to force it upon us."

It was his way of saying that he agreed with the Egyptian and the Asiatic, but differed from the Englishman. For that reason—if he had any other he omitted to give it—he deferred to Origen and Lactantius with respect, but treated Cranmer with the same icy politeness which he meted out to Sir Richard Bethell. And then, having finished his historical disquisition, and deprecated Cranmer's adroitness in changing his religious opinions with the rapidity of genius, he shifted his ground and went on to examine the question in the light of its bearing upon the moral condition of the country.

He did not, like Lord Redesdale, express complete satisfaction with English moral standards. On the contrary, he was very much afraid that "as respects

the gross evils of prostitution, there is hardly any country in the world where they prevail to a greater extent than in our own. With regard", he continued, "to another most dangerous evil—what is called ante-nuptial incontinence—its prevalence is so general in country as well as in town, that we must all feel humbled to the dust when we consider with how litle strictness Christian obligations are in that respect observed." But he saw, at the same time, a brighter side to the picture and considered himself entitled to "say with joy and thankfulness that the observance of the marriage tie is faithful in the highest degree"—a circumstance which he attributed to "the indissolubility of marriage according to the English law".

That was very fine and impressive as a display of rhetorical fireworks, though the House may very well have been bewildered to find the speaker, after making light of the authority of Archbishop Cranmer, who was at any rate a Christian and a married man, attaching importance to the support which he was able to give to his case by quoting passages from the writings of those unmarried unbelievers, Hume and Gibbon; but the rhetoric was that of an orator who took his facts from his imagination.

Gladstone cited, and could have cited, no statistics in proof of his statement that prostitution was more prevalent in England than on the continent; while his boast, also unsupported by statistics, that the marriage tie was more faithfully observed in England than elsewhere, with the implication that the clients of the prostitutes were almost invariably bachelors, was in flagrant contradiction with the bold statement of another speaker who took part in the debate that if, as some contended, adultery

was itself a dissolution of marriage, very few members of the House of Commons would be justified in describing themselves as married men.

It might have been asked, too, whether the indissolubility of marriage to which Gladstone ascribed the virtues of the married was not also one of the causes of the prevalence of prostitution and ante-nuptial incontinence, as Dumas the Younger declared it to be when presenting the case for divorce in France; but as that question was not raised, there was no need for Gladstone to reply to it, and he was able to pass on to the inevitable reference to "the thin end of the wedge".

The thin end of the wedge had, he was bound to admit, already been inserted; but it had not yet been driven in far enough to do much harm. Divorces, being difficult and expensive to obtain, had so far been few and far between. As soon as it was made cheaper and easier to get them there would infallibly be more of them. The bad example set by a few dissolute members of the aristocracy would quickly be followed by that great middle class which constituted the backbone of the country, and England would thus be launched upon "the first stage of a road of which we know nothing except that it is different from that of our forefathers, and that it is a road which leads from the point to which Christianity has brought us, and carries us back towards the state in which Christianity found the heathenism of man". In short:

Facilis descensus Averno;
Noctes atque dies patet atri janua Ditis.

It reads like the speech of a reactionary diehard—the rising hope of stern, unbending ecclesiastical

Tories. Nothing, one would have said, could have been more reactionary; and yet, curiously enough, when the principle of the Bill had been agreed to in spite of all these alarmist arguments, and its details came up for review in Committee, we find Gladstone shifting his ground and taking his stand on the side of progress, for reasons which are very creditable to him, though they were not such as ecclesiasticism would approve.

Much as he disliked the idea of divorce, he disliked the idea of injustice even more. Strongly as he objected to sin, he objected still more strongly to the legal recognition of any privileged class of sinners. In sin, as in other matters, there should be equality of opportunity. The sin of divorce ought either to be forbidden to everyone or open to all. Since Parliament had decided to permit that sin, Parliament ought also to afford adequate facilities for its commission. It ought to provide local machinery for the hearing of divorce cases in the country, instead of requiring everyone who wanted a divorce to come, and go to the expense of bringing his witnesses, to London; and it ought not to refuse to women any privilege which it accorded to men—a point which he made in a speech on an amendment, moved by Drummond, the member for West Surrey, putting women on an equality with men before the new law.

Gladstone supported that amendment with arguments of which it seems just to say that they supplied quite as sound reasons for extending the divorce laws as the speech from which we have taken so many extracts furnished for curtailing them.

He spoke as the Feminists would have wished him to speak. The Bill, in the shape in which it was presented to the House, seemed to him, he said,

"not so much designed in the spirit of preventing a particular sin as by way of the assertion—I must add, the ungenerous assertion—of the superiority of our position in Creation"; and he insisted that the mischief of permitting a few additional cases of divorce—"few" in this speech, though in previous speeches he had expressed the fear that they would be numerous—was a small matter compared with the evil of "introducing this principle of inequality between men and women".

The House, he saw, took the view that the act of adultery itself dissolved the marriage tie. He did not himself take that view; but he had no intention of allowing those who did take it to run away from its logical consequences.

"If the marriage tie be so dissolved", he asked, "what right have you to compel a woman whose marriage tie has been broken, to live unmarried, in the external relations of marriage, with a man to whom she is not really united? I confess that the assumption of such power appears to me on your own principle entirely unwarranted."

With equal thoroughness, and with equally keen logic, he proceeded to examine the narrow definition of that "cruelty" which, according to the new law, was to be required to give wives a right to divorce from unfaithful husbands. According to the only available definitions—those of the ecclesiastical courts—there would be no cruelty within the meaning of the Act unless there were "danger to life, limb or health, or a reasonable apprehension of such a danger". He went on indignantly, ignoring the Early Fathers this time, and treating with lofty scorn the ecclesiastical rulings of which he had previously been so respectful.

"Is that the only kind of cruelty which prevails

in civilized society ? Is that the only kind of cruelty which finds its way into the hearts of educated and refined women ? Is not the cruelty of insult just as gross, just as wicked, just as abominable as the cruelty of mere force ?"

Whereupon he put a trump card on the table : a letter which he had received and had permission to read, from a woman, personally unknown to him, who described herself as "a deserted wife" :

"I speak from experience, sir, for my heart has been wrung, and my life embittered hopelessly and for ever, by the cruel infidelity of a husband who openly boasted that the laws of England did not recognize adultery on the part of the husband as a sufficient ground for divorce, and that, consequently, it was no sin. I do not hesitate to affirm that, if this Bill pass, the sanctity and the purity of the marriage tie will be destroyed for ever, and that weak-minded and weak-principled men will quiet their consciences with the tacit permission granted them by Act of Parliament to indulge in a life of profligacy, while the oppressed and helpless wife will, in many cases, be driven to a life of sin, hoping by its excitement to stifle the anguish of a breaking heart."

It was a letter which really swept away many of the arguments against divorce which Gladstone had himself used ; but it seems to have swept him with them.

"I do believe", he commented, bringing his fist down on the table, "this letter contains upon the whole a much truer estimate of human life and action than had been taken by the framers of this Bill."

It unquestionably did so ; and it also proved, in conjunction with the arguments which Gladstone

himself had just been urging in Committee, a great deal more than he either meant or desired to prove when he embarked on the controversy. For the right conclusion to be drawn from it—the conclusion which it really contained—was not merely that men and women ought, in common justice, to be equal before the divorce law, but also that even when there was no question of adultery, situations could, and did, occur in married life for which divorce was not only the one effectual, but also the one imaginable, remedy.

Not only, therefore, did Gladstone, like Balaam, remain to bless when he had come to curse. He was also, in the debates on this Bill, building better than he knew. But all his efforts were in vain. The Bill passed without the amendments to which he attached so much importance; and the fight for divorce was transferred to another arena.

CHAPTER XIX

Office of King's Proctor created in 1860—Hotel Divorces—Opportunities of Collusion.

THE first Divorce and Matrimonial Causes Act was not to be the last. Since 1857 several other Acts have extended and amended it, some of them for better and others for worse. The most notable—and also the most obnoxious—of these Acts is that of 1860, which introduced the King's Proctor and defined his functions.

We all know the King's Proctor: the watchdog of the divorce court.

The fear was felt that people who wanted divorces might try to get them without earning them: that husbands who were tired of their wives, and whose wives were tired of them, might pretend to be guilty of the sin of adultery, without taking the trouble to commit it, or that they might, when proceeding against adulterous wives, omit to inform the Court that they too had strayed from the paths of virtue.

That, it was decided in 1860, must not be. Machinery must be created for preventing it. The principle having been laid down that, though sin was the *sine qua non* of divorce, two sins, if husband and wife had both sinned, cancelled each other out, and steps must be taken to make sure that neither the innocent nor the guilty obtained divorces in circumstances which violated that principle. So it was arranged that divorces should be obtainable only on the instalment system.

First, the case having been proved, the judge was to pronounce a *Decree Nisi*—the word *nisi* meaning *unless*. Application being made, after the lapse of six months, that decree would be made *absolute*, *unless* it had come to light, in the meantime, that at the first hearing facts material to the issue had been kept from the knowledge of the Court, or that the divorce had been collusively sought because both husband and wife were anxious for it. The King's Proctor was charged to look about for proofs of such deception—which was believed to be frequent in undefended suits—and intervene if he found any. His successful intervention entailed the rescinding of the decree *nisi* and the refusal of the divorce.

His intervention has, perhaps, been more objectionable in theory than in practice. The creation of his office was, so to say, a half-hearted compromise. His staff has always been inadequate to the performance of his functions as a detective. His position might almost be described as that of a boy sent to do a man's work; and his effective interferences have consequently been rare.

In the majority of cases he has acted only on "information received", often in anonymous letters, from "common informers" who had a grudge against one of the parties to the suit or a Puritanical passion for poking their noses into other people's business. When supplied with such information, however, he has had no choice but to spend public money rather freely in investigating the private affairs of private citizens, with the result that, every now and again, husbands and wives who believed that they had succeeded in getting free of each other to their mutual satisfaction have found that they were still tied to each other to their mutual

discomfort—a result which strikes many people as absurd.

It implies, at any rate, and can only be explained and justified upon, two absurd assumptions: the one that adultery is most objectionable when nobody appears to have any particular objection to it; the other that no marriage ought ever, on any consideration, to be dissolved unless either the husband or the wife strongly objects to its dissolution. The absurdity of the business was brought into clear relief not very long ago when a member of Parliament, whose wife had recently divorced him, wrote to *The Times*, as soon as the decree *nisi* had been made absolute, and the fear of the King's Proctor was no longer before his eyes, to tell the world to what hypocrisy it had been necessary for him to stoop in order that he and his wife might secure what was, to all intents and purposes, a divorce by mutual consent.

The initiative had been hers. She had confessed, when he complained of her coldness, that she was tired of him and was in love with someone else. Whether she had given him any grounds for taking action does not appear. He, at any rate, had given her none. He had no wish, however, to live with her against her will, feeling that a wife who preferred somebody else was not the wife for him, and that whereas, as long as he and she remained married, both of them would be miserable, there was every likelihood that, if they separated, they would both find happiness in other marriages. So the only question for him was: How could a divorce be obtained with the minimum of expense, inconvenience and scandal?

A "hotel divorce"—the expression has become almost a technical term—was decided upon.

It was agreed that he should hire a lady of easy virtue—solicitors know where to lay their hands on such ladies—to spend a night with him in a Brighton hotel, passing there as his wife, and should send the hotel bill to his actual wife as evidence on which she could base a demand for the divorce which they both wanted.

His relations with the hired lady were, in fact, he assured his readers, absolutely innocent. Being in no mood for any other relations with her, he spent a blameless night on the sofa while she spent a blameless night in the bed. She had been hired only to place herself in a compromising situation from which intimate relations might fairly be inferred by a Court of Justice. She honestly carried out her part of the bargain and received her fee; and a collusive divorce was thus obtained with her assistance.

Nor is the case exceptional. The example thus set has been widely followed. Collusive divorce is nowadays the commonest kind of divorce, and this is the commonest kind of collusion because it is the kind which it is most difficult for the King's Proctor to detect.

Different judges, it is true, take different views of the proceeding. Some of them smile on it, and some of them frown on it. According to some judges, indeed, it would seem, scandal is of the essence of divorce, the name of the hired lady ought to be disclosed and held up to opprobrium, and the respondent's failure to sleep in the same bed with her and be found in bed with her when the chambermaid brings the hot water in the morning is negligence amounting almost to contempt of court. But these are difficulties easily got over by those who are aware of them and are well advised by their

solicitors; and the only practical advantage to anyone of the judicial severity is that it gives any lady who consents to be hired for this purpose an unimpeachable excuse for raising her charges.

Thus the machinery devised by the Act of 1860 to prevent collusion easily can be, and constantly has been, defeated; and there is another Act—that of 1884—by which machinery which facilitates collusion has been provided.

A woman could already, when that Act was introduced, obtain a divorce on the ground of desertion, as well as of cruelty, coupled with adultery. The Act of 1884 provided that failure on the husband's part to comply with a judge's order for the restitution of conjugal rights should be held to constitute desertion.

That was progress of a sort, though not, perhaps, exactly the sort of progress which the legislators were contemplating. The change in the law did nothing whatever to help the hard case of the woman whose husband had really deserted her in order to live a new life with another woman in a foreign land. She, as a rule, remained bound to him because of her inability to produce evidence of the adultery of which she had every reason to believe him to be guilty. On the other hand, nothing was easier, under its provisions, than to arrange an agreed desertion which would throw dust in the eyes of the King's Proctor and satisfy legal requirements.

Case after case of the kind has figured, in recent years, in the Courts.

Proof of adultery, whether it had actually been committed or not, having been furnished after the comedy described above had been played, all that was necessary, after the husband had left his home, was a further comedy consisting in an exchange of

letters, carefully drafted under skilled legal advice. First the wife would write the husband a tearful letter, imploring him to return to her, and promising that, if only he could do so all should be forgiven and forgotten. Then the husband would reply, gently but firmly that, his affections having been irrevocably alienated, he could not bring himself to accede to her request; and the judge, however certain he might feel that the letters were agreed letters and that the desertion was an agreed desertion, had no option, on the evidence before him, but to pronounce the decree of divorce demanded.

Until the time, considerably later, when, the feminists having taken a hand in the game, yet another Act was passed, giving women the right to proceed for divorce on account of a single act of adultery—what some of the lawyers had called "accidental" adultery—this was the most usual method of collusion. It was certainly more convenient and decorous than the collusive cruelty to which recourse was sometimes had before its introduction—the husband boxing his wife's ears in the presence of the servants or other witnesses, and the wife concealing the fact that she had consented to the assault, which, being an agreed assault, was not as a rule a violent one, because she had been told that that was her only way of getting rid of him.

Even when thus amended, however, the law was still felt by people who were not ecclesiastically minded to be very unsatisfactory. The demand for such further modification of it as would bring it into line with modern thought and common sense became louder and louder and finally resulted in the appointment of that Royal Commission which issued its Report in 1912.

CHAPTER XX

Royal Commission of 1909—Its Two Reports—Analysis of the Minority Report favouring Divorce by Mutual Consent or for Incompatibility of Temper.

THE Royal Commission was appointed in November 1909, under the presidency of Lord Gorell, formerly President of the Probate, Divorce and Admiralty Division. The other Commissioners were the Archbishop of York (Dr. Lang), The Earl of Derby, Lady Frances Balfour, Lord Guthrie, Sir William Anson, Sir Lewis Dibdin, Judge Tindall Atkinson, Sir George White, Mrs. Tennant, and Messrs. Thomas Burt, Rufus Isaacs, Edward Brierley and John Alfred Spender.

It was a really representative Commission. It threshed out thoroughly the questions submitted to it, holding 71 sittings and examining 246 witnesses, representing practically every interest in the country.

Carefully selected exponents presented the points of view of several religious bodies: the Roman Catholic Church, the Jewish Community, the Positivists, and all the most important of the Nonconformist Churches, as well as the Church of England. The history of the subject was expounded in memoranda prepared by lay as well as ecclesiastical experts. Barristers who had practised in the Divorce Courts gave the Commission the advantage of their experience; and so did Solicitors, County Court Judges, Metropolitan Police Court Magistrates, Stipendiary Magistrates, Police Court Missionaries,

and Rescue Workers, Poor Men's Lawyers and Prison Officials.

A number of doctors—women as well as men—were called to give the Commission their views as to the bearing of venereal diseases and insanity on matrimonial relations. Evidence was also collected and given—largely by correspondence—of the working of the divorce laws of several foreign countries; and the Societies of one sort and another whose representatives attended to speak for them included the Eugenics Education Society, the Divorce Law Reform Union, the National Council of Public Morals, the National Society for the Prevention of Cruelty to Children, the Women's Industrial Council, and the Women's Liberal Federation. Mr. Maurice Hewlett gave evidence as a novelist who had made a study of human nature.

Unanimity was not to be expected from so composite a body, and was not attained. There was confusion of tongues and a clash of opinion, not only among the 246 witnesses, but also among the 14 Commissioners. Some of the former were strongly of opinion that divorce ought to be forbidden with the utmost rigour of the law; others that a divorce should always be obtainable by anybody who wanted one. The Commissioners expressed their views and differences in two Reports: a Majority Report which recommended an extension of the grounds on which divorce should be granted, and a Minority Report which deprecated it, declaring that "there are reasons at the present time which lead us to think that the State is called rather to strengthen than to relax the strictness of its marriage laws".

The members of the Commission who signed the Minority Report were the Archbishop of York, Sir Lewis Dibdin and Sir William Anson. It is a

beautifully written Report. It can be admired even by those to whom it seems only the manifesto of ecclesiastical diehards, arguing desperately with their backs to the wall, and trying to establish Bishop Wilberforce's conclusions, not with Bishop Wilberforce's arguments which they perceived to be out of date, but by dialectical methods which Bishop Wilberforce would have disdained to use. We will take it first and get it out of the way.

It is, for all its alluring eloquence, a somewhat disingenuous document, compact of unintended inconsistencies which a critical examination soon reveals. For we actually find, in two successive sentences, the contentions that the State ought to, and that there is no compelling reason why it should, base its divorce laws on "the rules laid down by Christ for His own followers"; and we also find the solemn assertion, already quoted, that the strengthening rather than the relaxation of the marriage laws is the crying need of the time, followed, after an interval of a page or two, by an expression of concurrence in some of the Majority Report's proposals for relaxing them. The Minority, indeed, taking a leaf out of Gladstone's book, after starting with the premise that to seek divorce is sinful, find their way, like Gladstone, to the conclusion that rich and poor sinners—and male and female sinners—ought to be given equality of opportunity for sinning.

Nor are these their only inconsistencies. There is another very glaring one which runs all through their Report. Wherever the Majority Report suggests new grounds on which divorce might properly be granted—be it desertion, or cruelty, or drunkenness, or insanity, or prolonged imprisonment for some disgraceful offence—we find the Minority signatories meeting their proposals with

two rejoinders: the first that there is no public demand for any such concession; the second that, as the experience of other countries proves, the granting of the concession is invariably followed by a sudden and serious increase in the number of demands for divorce. They actually do not see—their eyes being blinded by their zeal—that these two arguments are mutually destructive, seeing that, if nobody wanted divorce on these grounds, nobody would ask for it.

What they ought to have perceived—and no doubt would have perceived if they had not embarked upon the enquiry with their minds already made up—is this: that the cry for divorce does not make a great deal of noise because the people who are anxious to be divorced are neither very numerous nor very anxious to draw attention to themselves; and that the increase in the number of divorces sought, whenever divorce is made easier to obtain, is as conclusive a proof as anyone could ask for that the demand for it, even if it is not extensive, is real.

In some passages of their Report, indeed, they do seem to perceive this. At any rate they unwittingly admit it. For an admission of the kind is unquestionably implied when they oppose the general trend of the recommendations of the Majority Report on the ground that there are "great forces of human passion" which "must always be pressing with all their might against whatever barriers are set up", and that it is absurd to suppose that "those barriers can be permanently maintained in a position arbitrarily chosen, with no better reason to support them than the supposed condition of public opinion at the moment of their erection".

If that be true, then it is obviously untrue that there is no public demand for the concessions

proposed by the Majority. The two statements cannot stand together. The imperious claims of logic demand that one of them should give way to the other.

Nor is even that all that there is to be said. We come to a point still more important.

The Minority signatories are so resolved to make play with the argument about the thin end of the wedge, and so hostile to the Majority Report that, having first attacked it for going too far, they turn round and ridicule it for its inconsistency in not going far enough; and the result of that dialectical method is to make it perfectly easy to compile from their pages not only the case which they are trying to present for the total abolition of divorce, but also a case—a very good and convincing case—for allowing divorce by mutual consent. That case may usefully be summarized.

All the proposals of their colleagues, the Minority say, "predicate a state of circumstances which proves that the purposes for which the marriage contract was entered into have been defeated, with the consequence that the combined life which it was the purpose of that contract to establish is, in fact, and finally, determined". What these colleagues want, they suppose, is to make marriage dissoluble for causes which "are generally and properly recognized as leading to the break-up of married life". That seems to be their only fixed principle. But it is a principle not very solidly fixed, for these two reasons: in the first place because the circumstances enumerated in the Majority Report as tending to produce such a breach do not, in fact, invariably produce it; in the second place because if the "fixed principle" of the Majority be accepted, its acceptance must carry them much farther than they propose to go.

And the Minority drive this latter point home with great eloquence.

"The conditions of the marriage contract," they write, "are not only that the parties will live together and cohabit without exposing each other to bodily suffering. They promise to 'love one another', to take one another 'for better for worse, for richer for poorer, in sickness and in health', during their joint lives; and these promises are as much of the essence of the matter as any of the other obligations of the married state.

"The united life described in these familiar words may be fatally wounded and swept away without desertion or cruelty, or insanity or inebriety, or imprisonment. Who can judge, for example, the effect of unkind words, or studied neglect or indifference, which no court can grapple with, but which, nevertheless, may be destructive of real union? That union is determined when husband and wife may cease to love one another. If, therefore, we are to adopt the principle we have stated, it follows that divorce ought to be admitted when it is clear that the parties have irreparably lost affection for each other, or, indeed, when either party has become permanently alienated from the other."

Here, as in the case of Gladstone's speeches in Committee, the appropriate comment is supplied by the *Book of Numbers*:

"And Balak said unto Balaam: 'What hast thou done unto me? I took thee to curse mine enemies, and, behold, thou hast blessed them altogether'."

For here, in a Report which ostensibly advocates enhanced stringency in our marriage laws, we actually have the case for allowing divorce by mutual consent or for incompatibility of temper most properly and persuasively stated. It is presented

as the *reductio ad absurdum* of the argument which, admitting the permissibility of divorce on any grounds fatal to the purposes of marriage, refuses to allow it on these grounds.

And the premise from which that important conclusion is derived by a flawless logical process is not disputed. It figures—or, at all events, enough of it to carry the conclusion figures—in the Minority as well as in the Majority Report.

The Minority Report admits that the proof of adultery warrants the granting of a divorce. "The repeal of the existing Divorce Acts", it says, "even if desirable, is not practicable." But it may be said quite as truly of adultery, as of cruelty, insanity, or drunkenness, that it easily may, but does not always and need not necessarily, lead to "the break-up of married life". There certainly are women in the world who can live more contentedly with a husband who is occasionally unfaithful to them than with one who habitually comes home drunk and knocks them about. Whence it clearly follows that what is offered to us as the *reductio ad absurdum* of the position of the Majority is, in reality, an exposition of the logical consequences of the admissions of the Minority themselves, and might be presented, almost syllogistically, thus:

1. Divorce for adultery is right and proper because adultery leads to "the break-up of married life".

2. Incompatibility of temper also leads to the break-up of married life.

3. Therefore divorce for incompatibility of temper is also right and proper.

The Minority—the Archbishop of York and his colleagues—having accepted the first and insisted upon the second of these propositions, have unescapably,

though unintentionally, committed themselves to the third—to a relaxation of the marriage laws from which their colleagues shrank, and to substantial agreement with witnesses whose evidence they quote with derision.

One witness whom they quote in this spirit is Miss Llewellyn Davies, the general secretary of the Women's Co-operative Guild, who courageously said :

"When man and wife agree to part, I feel it would be much better for the morals of both to grant a divorce. All our members are most emphatic that where husband and wife could not live happily together it was no real marriage, it was a life of fraud without love. Nothing but love should hold two together in this most sacred of all bonds. A divorce should be granted whenever there is serious desire on the part of either of the parties not to live with the other."

Another pertinent piece of evidence which they put in is the letter of an anonymous correspondent who had written to lay his case before the Commission :

"I married when very young and more than a quarter of a century ago. I separated by mutual consent (foolishly perhaps). As the law at present stands neither my wife nor myself can obtain a divorce, though I should very much like to be free. There are many cases of this sort, and if the law was only altered as proposed by many that after a certain number of years' separation either party could obtain a divorce, it could injure no one and would give many much more happiness."

These depositions, cited in the Minority Report as horrible examples of the possibilities of human perversity, really amount to nothing more than

restatements based, in the one case on observation and in the other on bitter personal experience, of their own impersonal, but quite logical and very eloquent, presentation of the cruelly hard cases of husbands and wives who have found the marriage bond a galling fetter. For they cannot seriously believe—what nobody else believes—that the incompatibility which they declare to be destructive of marriage can be transformed into the compatibility which makes it a happy and harmonious state by an effort of the will on the part of one only of the two incompatibles.

Either they know better, or else they have never given this branch of the subject the attention which it deserves.

So we must be grateful to them and may congratulate them, as we congratulated Gladstone, on having built vastly better than they knew, and express our surprise as every careful and conscientious student of their valuable Report must necessarily do that, after proving, as they do, that as divorce is to be allowed it ought to be made easy, they should have thrown up devout hands in horror when they discovered that, in the countries in which divorce had been made easy, divorced people often not only achieved happiness but were even regarded as respectable.

Yet they did so; and nothing seems to have shocked them more than this little bit of evidence given by Mr. Newton Crane, Senior Counsel to the American Embassy in London, on the conditions which liberty of divorce had brought about in most of the United States:

"The large number of suits filed, and the ease with which decrees may be obtained, have a growing tendency to familiarize the community with divorce,

and it must be admitted that it is now looked upon by people of respectability in certain walks of life as a popular and firmly established institution. The view is speading that if an unhappily married couple desire to have their marriage dissolved it is a matter which is peculiarly their own affair and one with which the public has nothing to do."

And why not ?

America is by no means the only country in which that view is widely held. Prime Ministers obviously hold it when they invite divorced film stars to visit them in their homes ; and the only alternative view which sound logic permits is the view that unhappiness is an end in itself and that in the multitude of Prodnoses there is wisdom.

If the Archbishop and the other signatories of the Minority Report held that alternative view, they should have said so in such intelligible words as these, and so removed all possibility of doubt from the minds of those who go to them for guidance.

CHAPTER XXI

The Majority Report of the Royal Commission—Analysis of the Evidence and Extracts from it.

THE evidence given before the Royal Commission was various and voluminous. Some of it has already been quoted in illustration of points made in the course of the narrative. A fuller, though necessarily a brief, summary of it may now be attempted; and the first fact to be noted is that in the Majority Report a great deal of it is swept aside, almost with a gesture of scorn, as unworthy of the legislator's attention.

The Commissioners invited, and listened with patient politeness to, the opinions of a large number of divines, and then came to the conclusion that what the divines said was not very important. They saw them, like the Early Fathers, hopelessly at variance with each other as to the meaning of the scriptural texts which they quoted, and they could find no reason why people who did not admit the authority of the Church—a large and increasing number—should be bound by the opinions of Churchmen. The question for them was: What is best for the interests of the State, of society and morality, and also for that of parties to divorce suits and their families? In answering these questions they must be guided, not by theological dogmas, but by the actual facts and conditions of life.

That, clearly, was a great advance upon the views which prevailed when Lord Lyndhurst disputed

with Bishop Wilberforce, and Gladstone with Sir Richard Bethell, in 1857. Theological preconceptions, though inspected, were no longer allowed to hang like a veil between the enquirers and the truth; and the relevant facts were, for the first time, presented to the public, not as those isolated "hard cases" which were alleged to "make bad law", but in bulk and in an impressive and orderly array.

There were many matters on which the theological witnesses seemed to have been tempted to set opinion above truth and to take their facts from their imaginations; and many of the facts derived from that untrustworthy source were most emphatically contradicted by witnesses who had a first-hand knowledge of the subject.

A number of theologians, for example, had expressed the opinion that the cost and difficulty of obtaining a divorce strengthened the marriage tie and stabilized family life. They were now met with an overwhelming mass of evidence from Medical Officers of Health, Police Court Missionaries and other people well acquainted with the lives of the poor, to the effect that it was, on the contrary, a frequent cause of the formation of immoral connections by respectable people who had no immoral inclinations and would much have preferred regular unions. Here is a case, cited and vouched for as typical, by Dr. Scurfield, Medical Officer of Health for Sheffield:

"The husband of F. M. turned out to be drunken and unfaithful. She had been in domestic service before marriage. She left her husband on account of his behaviour and went back to service. She has not seen her husband for several years, and does not know whether he is alive or dead. She now lives happily with J. D., who is an engineer's labourer. They

have two children. The house is clean and comfortable, and to all outward appearances satisfactory. J. D. and F. M. would like to be legally married."

Here are three cases selected from a large number which were cited by Dr. S. G. H. Moore, Medical Officer of Health for Huddersfield :

1. "Mrs. L. was deserted by her husband after a few years of married life. He left her to support their little girl, going away himself to America. He was immoral and careless and rarely showed her any consideration. In her work she met with J. L., and a friendship sprang up between them which ended with her living with him. She subsequently gave birth to a daughter, which was notified in accordance with the Early Notification of Births Act. The woman informed me that she would gladly marry her present lover, but that the expense attaching to a divorce was too great. They lived very happily together, and the man is most considerate and brings his wages home regularly."

2. "In this case the man was deserted by his wife, who is now a prostitute and was ever unfaithful to him, in fact she made his life a long misery until she left him altogether. He met R. at a public-house where he was in the habit of visiting on his way home from chimney-sweeping. R. was the domestic servant there. They became good friends, and finally he persuaded her to go and live with him. She willingly did so, and proved a most faithful and exemplary companion. The home was beautifully kept, and in spite of much poverty she ever did her best for him. Yet when ill, no charitable society would come to their assistance because they were not married. I often helped this woman because I admired her character. She was terribly disappointed that she could not be legally united

to the man, who also felt very deeply the position of the woman who was so much to him."

3. "R., a gardener; wife a lunatic, has been in an asylum for a dozen years; this man has relations who have helped and restrained him, but he has recently formed an irregular association with a woman who was, first of all, his housekeeper. The arguments with which he defends his action may not be logical but they are at least forceful and, in effect, satisfy his neighbours."

These, be it noted, were not cited as unique cases, or even as rare cases. They were said to be cases of constant occurrence all over the country. The witnesses who vouched for them were men and women who, thanks to their avocations, had forgotten more about the lives of the poor than the Archbishop of York had ever known; and the upshot of them is that there were thousands of people, throughout the length and breadth of the land, living in immoral association because the Archbishop and people of his way of thinking insisted upon the maintenance of a law which left them no choice but to do so.

Dr. Ethel Bentham told the Commission a number of similar stories, some of them of the most appalling character. One may suffice. It shows what may happen when husbands and wives who have been separated resume cohabitation as the Archbishop of York in some of his more exalted moods seemed to regard it as their Christian duty to do:

"A woman applied for a separation order because of cruelty and unfaithfulness. Her husband had communicated venereal disease to her. She obtained her order and 8s. per week. The man went to prison rather than pay. She had, of course, the alternatives of the workhouse or prostitution, and

frankly discussed both with me. I happened to be in medical charge of the case. She did try the workhouse, I suppose more or less on my advice, but she came out saying that she had nothing in the world but her children, and she could not be separated from them. She did return when the man came out of prison, after a long experience of the impossibility of getting any maintenance. She returned to him, and he said he meant to pay her out for it all, and he did. She lived a terrible life, and there were other children, some born dead, others who have little chance of being useful citizens."

Did the Archbishop, one wonders, really regard marriage as so sacred an institution that it was better for that sort of thing to happen than for man to presume to put asunder those whom God had joined with such deplorable results? Did he not perceive the profanity of holding God responsible for the marriage, but not for its consequences? And did he and the other austere ecclesiastical extremists really imagine, and expect the general public to believe, that such a reunion was preferable to the consequences which experience showed to be normal when homes were broken up but divorce was impossible—consequences which Dr. Ethel Bentham thus summarized:

"A man left with children is forced to have a housekeeper, and in the small houses of the poor decent sleeping arrangements are not possible, and disaster nearly always ensues."

But there is another more important moral contained in these stories—or, at all events, in the stories told by Dr. Moore and Dr. Scurfield. They show that monogamous marriage is, after all, the ideal of the masses as well as of the Church, and that the failure of a first experiment in monogamy, far

from killing, often confirms the desire to attain to it, though it is a desire which clerical obstruction has again and again tried to frustrate, and which was also, at that date, impeded by the prohibitive cost of proceedings for divorce, as was set forth by a solicitor with the kind of practice which made him familiar with the facts.

"I think there is no doubt, sir," he said, "that as far as the actual working classes are concerned, the present cost of divorce is prohibitive"; and many other witnesses testified to the same effect.

It was represented, of course, by some of the witnesses that the people who were too poor to afford divorce were not demanding it; and the Minority Report laid stress upon their testimony.

"We feel bound," the signatories solemnly said, "to record our opinion that . . . there is no effective demand that divorce should be made easier"; but the other Commissioners dealt with that testimony and that expression of opinion even more scornfully than they had dealt with the theological disquisitions.

It merely proved to them—what most of them and most other people knew already—that the majority who did not want divorces for themselves were not worrying their heads over the troubles of the minority who did want them, but had no hope of getting them; and they felt that much of it could be discounted as probably inspired by ecclesiastical bias. Obnoxious laws are almost always more obnoxious to the poor than to the rich because the rich have so many opportunities denied to the poor of evading them, or making the best of a bad job; and this particular grievance was one for the removal of which the aggrieved could not very well agitate openly without drawing attention to domestic

disorders which most of them preferred not to talk about. As Mr. Fitz-Simmons, the Court Missionary at the Thames Police Court, put it:

"It is not so much a question of demand. I think the poor should not be denied the benefit of any law by reason of poverty. Respecting the question as to whether there is any demand for it, it ought to be remembered that the poor have known that the question of divorce was so far out of their reach that the idea of asking for the thing never occurred to them."

That seems a sufficient answer to the episcopal suggestion that the poor proferred divorce laws which placed them at a disadvantage, and had no wish to be put on terms of equality with the rich. The next question was: Should women be put on a footing of equality with men?

The old objection to that—the jaunty objections raised by the men of the world in 1857—were heard again; but they lacked some of the old ring of cynical self-satisfaction, for two reasons. The voices of the Feminists had, in the meantime, been heard in the land; and there was also medical opinion to be reckoned with. Women were now insistently demanding this equality. The Commissioners had before them resolutions calling for it which had been passed by a large number of Women's Associations and could find "no evidence of difference of opinion among women in this matter". The medical reasons for according their demand were thus summed up by Dr. Frances Ivens, honorary medical officer for the diseases of women at the Liverpool Stanley Hospital:

"It is undesirable from a medical point of view that the present sex-inequality of the divorce law should be maintained. By even one single act of unfaithful-

ness on the part of the husband, the wife is exposed to the risk of contracting a contagious disease. It should not be necessary for her to submit to the ruin of her health to enable her to obtain a divorce on the additional ground of 'cruelty'."

And the evidence, which was supported by plenty of other evidence from other doctors, went on to insist upon the gravity and far-reaching consequences of the disorders to which a woman was thus exposed: diseases, it was pointed out, that she might never get rid of, which might sterilize her, which would make the second marriage for which a divorce, obtained after she had contracted them would set her free, dangerous for her second husband, and in the cases in which sterilization did not result, would almost infallibly be transmitted to her children. Mr. James Ernest Lane, for instance, speaking at once as a member of the Eugenics Education Society and as Senior Surgeon to the London Lock Hospital, insisted most emphatically that "the existence of venereal disease, contracted after marriage or before marriage, should be a ground for the dissolution of such a marriage".

That, of course, is what one would have expected a eugenist and a specialist in venereal diseases to say. Some of the eugenists, it is true, qualified their evidence by speaking of the risk of infection in the case of an isolated act of so-called "accidental" adultery as negligible; but that was not Mr. Lane's view, nor is it a view in accordance with common sense. Nobody can measure the risk. It is quite a grave risk when a man who has dined too well picks up a prostitute in his cups; and nobody can be sure that the act excused as isolated was really isolated and will not be repeated when temptation recurs. No one, therefore, except the woman

exposed to the risk, has the right to decide whether she shall take it or not. Mr. Lane's estimate of the gravity of the risk will be found in this extract from his evidence :

"I meet with a very large number of cases of married women infected by their husbands—a very large proportion."

"Of cases that come into the hospital ?"

"Yes."

"Have you any idea what proportion ?"

"I can give you the proportion in three years—my experience in three years from the commencement of 1906. Of 1,270 admitted into the Female Lock Hospital, 225 were married women suffering from some form of venereal disease, mostly syphilis—225 out of 1,270."

"Were those respectable women ?"

"Most of them quite respectable, and the husbands had contracted the disease as a rule during the latter months of their wives' pregnancy. When the child was born they resumed cohabitation, and their wives were infected."

"Would you draw the inference from that that separations are a bad thing between husband and wife ?"

"These are these compulsory separations."

"If they lead to trouble the more permanent separations would be worse ?'

"Yes, I think so."

There really is no answer to stubborn facts of that sort. In the Minority Report they are not answered —its stately sentences roll on their majestic way without regard to them. One is left with the impression that, in the view of the Archbishop and his coadjutors, the law of Christ—or, rather, what they conceive to be the law of Christ—must be

fulfilled, even if we see its fulfilment resulting in the widespread dissemination of venereal disease and the birth of children suffering from gonorrheal blindness, rickets, mental deficiency and the other baneful consequences of hereditary syphilis. They did not, of course, actually say quite as much as that; but that attitude is implied alike by what they did say and by what they left unsaid, so that we naturally find the Majority Report taking the line that, in a matter so intimately concerning the public health and welfare, what was said by the doctors merited more attention than what was said by the divines.

The attitude of the divines opposed to divorce, in short was, both in this matter and in certain other matters, that of the ostrich. They could not disprove —and they did not venture to deny—the lamentable moral consequences of those judicial separations, divorces *a mensa et thoro*, which were the only remedy provided by the Canon Law—"this nuisance in the law", as Bishop Cozens had styled it—for any kind of conduct which made married life unbearable. They simply pretended not to see them and wrote as if they did not exist.

But things are what they are, and the consequences of them will be what they will be even if Bishops do bury their heads in the sand or look the other way? Why, then, should Bishops wish to be deceived? Ample evidence of the state of things which the handing out of orders for judicial separation brought about was supplied to the Commission by Police Court Missionaries, both male and female. The evidence given by Miss Jeanette Mary Tooke, who had spent twelve years working in the slums of Gateshead and Sheffield, may be cited as typical of it:

"Do you think that the working of the Act of

1895 as it stands is to lead men and women into immorality ?"

"Very often. If a man is left with children, nearly always—if he has the children at home."

"With regard to keeping a housekeeper, it is the cost and accommodation ?"

"Yes, and it is difficult for a working man to get a respectable housekeeper ; it is impossible, almost. I have tried to find them, but they are rare."

"That is the man's position ?"

"Yes."

"What do you find with regard to the woman's position ?"

"A woman cannot live on the maintenance money if paid regularly ; she generally has to resort to taking lodgers or keeping a small shop, and if she takes lodgers she almost invariably enters into a new connection."

So witness after witness testified. There was not a witness among them all who had any imaginable motive for deceiving or misleading the Commission. All of them had been asked for their evidence because they were known to possess first-hand knowledge of the lives of the poor—such knowledge as the Archbishop of York, Sir William Anson and Sir Lewis Dibdin, his associates, had never had the opportunity of acquiring. The inference to be drawn from their evidence—many of them drew it themselves—was obvious : that among the poor, at any rate, the difficulty of obtaining a divorce, far from being a safeguard of morality, was a common, and almost a normal, cause of immorality.

If that was not true, it should have been refuted. If it was true, it was pertinent, and those ecclesiastical people who admit its truth and yet go on repeating the formula which forbids man to put

asunder those whom God has joined, are committed to, and may be challenged to defend, these propositions: that Christ laid down a law which, human nature being as God made it, was bound to lead to immorality, and that the immorality which thus inevitably occurs is a negligible evil in comparison with the gross evil of refusing to give literal interpretation—or the interpretation preferred by divines of a certain school of thought—to certain words ascribed to Christ in a manuscript written about three hundred years after his death.

These propositions are really implied in a great many passages in the Minority Report. They are also implied in the words quoted in the first chapter of this work from the Pastoral Letter of the present Bishop of Chichester. But the Majority Report struck a very different note.

It did not recommend the total abolition of orders for judicial separation, taking the view that they might be useful, and even necessary, in the case of wrongs which clearly required an immediate remedy; but it quoted with approval the views expressed about them by Mr. H. B. Brown, ex-Justice of the Supreme Court of the United States, and Lord Salvesen of the Judicial Bench of Scotland, who could speak of their working from practical experience.

"A situation more provocative of temptation and scandal," said the former, "cannot be imagined. For the former relations is substituted a marriage which is not a marriage—a celibacy, an amphibious existence which places the strongest inclinations of our nature under a ban and deprives both parties not only of the companionship of the other sex, but of the comforts of a home life. A legal separation is, in fact, a punishment rather than a remedy."

"What," the latter was asked, "does your own experience lead you to as a conclusion about separation without dissolving the tie of marriage?"

"I think," he replied, "they invariably lead to the persons just leading their own lives and not having any regard for chastity at all. I think, when you deal with a large body of the population, if a man (because it is nearly always in cases of separation and aliment that the action is instituted by the woman) is turned out of doors, so to speak, he consoles himself with other female society."

Was that what the Archbishop of York, Sir Lewis Dibdin and Sir William Anson wanted? It would seem so—one cannot help drawing the inference—from their statement that they concur in certain recommendations of the Majority Report with regard to separation orders, "except so far as those recommendations contemplate the substitution of divorce for mere separation in certain cases where magistrates' orders have been made". But that was not what was wanted by the signatories of the Majority Report.

As practical men and women, charged to propose practical remedies for proved evils, they attached more importance to the evidence of witnesses who spoke from practical experience of those evils than to the sonorous generalities—the "uplift", as we call it nowadays—of preachers who theorized and moralized and quoted Scripture for their purposes; and they proceeded to show their own regard for marriage by examining the various grounds which various reformers considered sufficient to warrant the dissolution of marriage.

CHAPTER XXII

Recommendations of the Majority Report.

THE grounds on which the Majority Report of the Royal Commission recommended that divorce should, in future, be obtainable, were the following:

1. Adultery and certain unnatural sexual offences.
2. Wilful desertion for three years and upwards.
3. Incurable insanity after five years' confinement.
4. Habitual drunkenness found to be incurable after three years from the first order for separation.
5. Imprisonment under commuted sentence of death.

The reasons given for these recommendations were sound and simple. The strongest of them was the probability—a probability amounting, in the opinion of many witnesses, almost to certainty—that if divorces could not be obtained in such cases many of those who wanted them, but could not get them, would form irregular connections. It was almost equally certain, in the view of other witnesses, that nobody would blame them very much for doing so, and that few people, except some clergymen and the religious ladies who hang on the words of clergymen, would even pretend to blame them. It followed that the refusal of divorce in such circumstances might not unfairly be described as "conduct conducive to" adultery. So the Majority Report rejected the view, favoured in the Minority Report, that immorality ought to be encouraged in this way.

Other matters, in addition to the cheapening and simpifying of divorce court proceedings, on which the Commission was asked to express its views, were the proper attitude of the law towards those cases in which there was reason to suspect collusion, and the respect due to the tender consciences of those clergymen—represented before the Commission by the Bishop of Saint Albans—who regarded it as "a very serious grievance that they are obliged to marry anyone who has been divorced" and would find the grievance still graver and more painful to bear if it were made possible for anyone to obtain a divorce on any grounds except adultery.

That grievance is one which we have already seen Bishop Wilberforce resenting. It had to receive attention, though there really was little to be said about it except that the clerical conscience in this matter is a very special kind of conscience, differing, not in degree, but in kind from the consciences of the majority of laymen, and consequently one which it is very difficult for the majority of laymen to understand.

The position, as represented by the Bishop of Saint Albans is this: That a clergyman may properly pity himself, and call upon others to pity him because the law requires him, as the minister of an Established Church, to celebrate the marriages of those whom the law allows to marry, but should be horrified by any proposal to dissolve marriages likely to result, if not dissolved, in the contraction of venereal diseases and the procreation of degenerate offspring, and feel no pity—but do his best to refuse relief to—men and women who are as miserable in their marriages as a cat and a dog tied up together in a sack. And a clergyman who takes that line is a

clergyman with whom a layman really does not know how to argue.

He and the clergyman are not, as the logicians say, *ad idem*. They approach the question from quite different premises. The clergyman seems to the layman—as the layman very possibly seems to him—to have a blind spot in his brain; so that the only question at issue, as the Commissioners perceived, is: Would it not be better to humour a clerical obstinacy, based not upon reason but upon mysticism, than to provoke that general strike of the clergy which the Bishop of Saint Albans threatened if it were not humoured?

They came to the conclusion that it would be better, and they seemed to sympathize—though their terms of reference prevented them from making any definite recommendation on that branch of the subject—with the Bishop's suggestion that "the only final solution is to be found in universal civil marriage, the religious bodies being free to lay down their own rules with regard to the bestowal of the Church's benediction". In the event, therefore, of their other recommendations being adopted, they proposed that there should be some modification of the law, giving the State Church the privileges, in this connection, of a private religious society, and so enabling clergymen to live in comfort with prejudices which they, as laymen, neither shared nor even comprehended.

Over the question of collusion and the maintenance of the office of the King's Proctor to prevent it, they hesitated.

Their recommendation, after weighing the pros and cons, was that the office should be retained on the ground that "it is contrary to the general principles of English law to permit a petitioner to

sue unless he or she does so with clean hands" ; but they struck a blow at that principle by admitting that "it is contrary to good sense to maintain the tie when both parties are guilty, when there is no prospect of re-uniting them or of breaking their irregular connections, and when it would be of advantage to them, their children, and the State, if they were freed" ; and they drew from the King's Proctor, then the Earl of Desart, himself, some interesting admissions as to the limitations of the usefulness of his office.

"I have felt, over and over again, at any rate in a considerable number of cases," the Earl of Desart said, "that my intervention has done more harm than good" ; and in reply to a question he explained what sort of cases he referred to :

"I mean this : cases in which it was hopeless that people should come together, where both would probably continue to live in irregular unions with persons with whom they had committed adultery, and it was difficult to say which was the most suitable for the children."

That was a very important admission. It was the more important, and should have carried the more weight, because the witness who made it was on the whole satisfied with the existing divorce law, and objected to giving women the same rights to divorce as men on the cynical ground that "a man is more exposed to temptation than a woman into which he may accidentally fall", and considered that a single act of adultery on the husband's part should give his wife a right to a divorce only when that act of adultery was "the result of careful planning and appointment with some particular woman"—only, one supposes him to have meant, if he kept a mistress, but not if he merely picked up a prostitute. It

classes Lord Desart, in spite of his cynicism—in spite of himself as one might say—with the many who came to curse divorce but remained to bless it. For here we have the avowal of the man whose business in life it was to prevent collusion, and to upset divorces which had been obtained by collusion, that to interfere in such cases was often to make the worst instead of the best of a bad job.

Then came the question whether it was desirable that the publication of reports, whether full or abbreviated, of the proceedings in the divorce court ought to be permitted; and one finds that the drastic proposals which have been embodied in recent legislation did not then receive much encouragement from the representatives of the Press who were called as witnesses.

Both reputable and disreputable editors were asked for their opinions, and stood upon their dignity. The former, while strongly objecting to anything which could be regarded as arbitrary interference with the liberty of the Press, expressed a proper respect for the prescriptions of decorum, and declared that their columns would be even more decorous than they were if their hands were not sometimes forced by the unscrupulous competition of the latter. But they insisted that that competition was really formidable; and that contention certainly derived support from the fact that the editors and proprietors of various organs which then made a feature of the publication of the unsavoury and indecorous details of such suits, judging, as one supposes, discretion to be the better part of valour, stood upon their dignity too, and stiffly declined the invitation to attend before the Royal Commission and explain what advantage, if

any, they believed their readers to derive from the perusal of their unpleasant columns.

But here there is a point to be made; for one has to note that most of the questions raised, alike in the discussion and in the Report, were quite irrelevant to the major issues which the Commission had under consideration.

Did the reading of these newspaper reports demoralize the young and innocent? Did the fear of publicity help to safeguard morality? Was there any serious risk that the removal of that fear would turn potential into actual offenders against the marriage law? Was not public exposure to mocking eyes a just punishment for those who violated their marriage vows or corrupted their neighbours' wives?

Those were the principal questions asked; and it cannot be denied that some of them had a certain limited importance. But a far more important question, hardly glanced at in the course of the enquiry, was this: Why should men or women who are suffering grievances for which the law promises to provide redress be required, in order to obtain that redress, to tell the whole story of the indignities that they have endured, not only to a judicial tribunal, but to the whole world, and have mud slung at them, and shameful insinuations made, in open Court, to make a public holiday and enrich the owners of prurient periodicals?

But we will let that pass. The Press is now muzzled—rightly, though for the wrong reasons, and not as completely as it ought to be and as it is in France and some other countries, where nothing can be published except the fact of the divorce and the names of the parties to the suit; and some of the other minor recommendations of the Report have been adopted.

Divorce proceedings have been cheapened, and poor suitors can obtain legal assistance at the public cost. Divorce courts have been multiplied and divorce suits can now be brought in the country as well as in London. Women have been placed on an equality with men, and allowed to claim divorce for a single act of infidelity—whether "isolated", as when a man succumbs to a temptation which assails him on his way home after a convivial gathering, or otherwise. But the other recommendations of the Report have been ignored, not because reasonable people think them unreasonable, but because Cabinet Ministers, however reasonable they personally may be, cannot rid themselves of their fear of the clerical vote.

Whether, or in what direction, clerical opinion is altering in the matter it is hard to say. Apparently there is a split among the clergy, and the split is widening.

There are clergymen who would acquiesce quietly in most of the reforms demanded. There are also a few—though only a few—clergymen who actively agitate for them. But the Catholic vote is solidly against them, the official view of the Roman Catholic Church still being that, though it is permissible for an ecclesiastical court to drive a coach and four through its own marriage laws by annulling marriages on grounds which a civil court would consider insufficient, it would be a deadly sin to alter those laws; and there are a great many clergymen both of the Church of England and of other denominations who take the same line in obstinate opposition to the new principles introduced by the Reformation. These do, or might, for voting purposes, constitute a political party capable of upsetting a Government. The people who have personal reasons for desiring

divorce law reform, being few and unorganized, do not.

The Roman Catholic attitude has its roots in history, and can therefore be understood. The attitude of the Anglo-Catholics of the contemporary clergy of the Church of England, so different from that of the clergy of the Reformation from whom they claim to be apostolically descended, is more puzzling, and invites a brief digression into the region of speculative theology.

What one discovers, on entering that region, is a great number of clergymen in a state of great perplexity about their creeds. What one hears is a buzz of talk about the propriety, or, as some say, the necessity, of "re-stating" the doctrines which they profess and have undertaken to teach—of bringing them, as they gravely put it, "into line with modern thought".

And then one examines these so-called re-statements and finds they are really new statements—flat contradictions in many cases, of the old statements—denials, sometimes open and sometimes masked, of nearly all the theological propositions which we were taught in the days of our youth. The more advanced, indeed, of our teachers nowadays do not so much re-state as explain away the miracles, the inspiration of the Bible, and the doctrines of the Incarnation and the Virgin Birth. A popular clergyman was lately censured by writers in the *Church Times* for going so far as to tell the readers of a popular evening paper that his faith in God and in the immortality of the soul was "weak".

Modernism is the common name for that new attitude towards the old beliefs. There are, of course, many grades of Modernism. One Modernist differs from another Modernist in scepticism. But

there is a modicum of Modernism in the teaching of all the able men in the Church; and there are at the same time limits to the Modernism even of the most advanced among them.

Long since, armed with the sharp scissors of the Higher Criticism, they cut to ribbons the doctrine of the literal—or even the so-called "plenary"—inspiration of the Bible; and quite a number of the conclusions of the Higher Critics are quietly accepted by quite a number of clergymen who have not scholarship enough to test them.

And yet—that is the curious thing about it—many of them, when they are asked, or offer without being asked, their opinion on this question of divorce, proceed to quote texts of Scripture as necessarily embodying the Divine Will, and quibble about their precise meaning exactly as their forefathers did in the days when it was taken for granted that the whole text of the Bible was literally inspired by the Holy Ghost; and we find them talking as if the doctrine of the absolute indissolubility of marriage, asserted in some of these texts but denied in others, rested on better evidence, and was far more deeply rooted in their minds, than several of the propositions contained in the Apostles', Nicene and Athanasian Creeds.

This inconsistency is inexplicable and glaring; but it has to be reckoned with. It, and the prejudice expressed in it, have been blocking the way for twenty years to reforms which common sense, as expressed in the Majority Report, has been asking for. It blocks the way even more completely to those other reforms—divorce by mutual consent or for incompatibility of temper—which the authors of the Majority Report felt obliged, as practical men, to treat as outside the range of practical politics.

CHAPTER XXIII

Evidence before the Royal Commission favouring Divorce by Mutual Consent.

DIVORCE can be arranged by mutual consent or granted on account of incompatibility of temper in France and some other European countries. In many parts of the United States of North America, divorces of this character are very common, though the nominal cause of complaint is, as a rule, some trivial and often comic kind of "mental cruelty". Our Royal Commission, therefore, had to face the question of allowing them in England. It did so; and the text of the Majority Report on this branch of the subject runs thus:

"MUTUAL CONSENT.—Some persons consider this as the only solution of the difficulties of married life under the conditions of modern civilization; and divorce at the will of one party, subject to suitable restrictions, has even been advocated by others. These suggestions have met with little support from any of the numerous witnesses called before us, and are not likely to meet with any substantial support at the present day in England. This and the previous cause (incompatibility of temper) are not recognized as necessarily putting an end *de facto* to married life as do the causes (cruelty, insanity, drunkenness, etc.) to which we have already referred.

"Accordingly we do not recommend these two causes as grounds of divorce."

The Minority Report, as we have seen, expressed a different view. It would not allow that any of the causes above enumerated were adequate grounds

for divorce; but it insisted eloquently that incompatibility of temper or "unconquerable aversion" easily may, and sometimes does, result in conduct quite as destructive of married life as cruelty. The conflict of opinion is interesting; and there are two comments which the passage cited from the Majority Report seems to call for.

1. The sort of evidence which the Commissioners received was largely the sort of evidence which they were looking for; and they do not seem to have been looking for evidence in support of divorce by mutual consent quite as diligently as they were looking for evidence on other branches of their subject.

2. In spite of the fact that they were not going out of their way to look for evidence of this kind, they did receive a certain amount of it; and some of the witnesses who offered it spoke very emphatically.

One witness who did so was Mr. Freke Palmer, a solicitor who spoke from an extensive experience of divorce court practice; and his evidence should be read in conjunction with that of the King's Proctor, which has already been quoted.

The Earl of Desart, as we have seen, desired the retention of his office, while admitting that it often did more harm than good, and opposed divorce by mutual consent while citing facts which really told in favour of it. Mr. Freke Palmer maintained that the office ought to be abolished because it nearly always did harm and never did any good.

"I would," he said, "entirely dispense with the King's Proctor, whose office is an extremely mischievous one. He accomplishes no good object. His only work is to endeavour to find out that the

successful party to a suit has been guilty of a matrimonial offence, in order to permanently prevent the separation of two people who, by the very nature of what has been proved, can never live together again, and who, by his intervention, are driven to lead irregular lives. I know of more than one instance of the very greatest cruelty caused by his interference, whereby, in one case, he prevented a woman tied to an unmitigated scoundrel from forming an honourable union with a man of good birth, her husband, against whom she had obtained a decree *nisi*, being a most worthless blackguard, and to this rascal this woman is tied for life by the action of the King's Proctor."

It was not that the King's Proctor had abused his office—he had merely fulfilled his functions. Technically he had been entitled to interfere. The petitioning lady had certainly given cause for his intervention. But . . .

"She was married to a scoundrel, who did not mind any misconduct by her as long as she kept him. There was another man in the case, and afterwards they simply lived together. The King's Proctor interfered, they could not marry and they lived together, though her lover was quite prepared to marry her and introduce her to his family, and bring her up honourably and properly."

It was a hard case; and the inference which Mr. Freke Palmer drew was not that hard cases make bad laws, but that bad laws result in hard cases. He admitted, in reply to questions, that the abolition of the King's Proctor, which he desired to see, would, in effect, result in collusive divorces—divorces, that is to say, obtained by mutual consent; but he could see no harm in that.

"Yes," he said, "it must come to that, I think.

If two parties have agreed and do not intend to live together again, I do not see why you should force them to do it, if they say, 'We cannot tolerate each other,' "; and he told a story of a man who "although successful, was completely beggared by the ruinous expense he was put to in defending himself against the King's Proctor's unfounded charges", and added:

"The King's Proctor serves no useful office, as it cannot be suggested that his attempts to preserve the matrimonial tie between two persons whose differences are wholly irreconcilable serve any good purpose. The sum total of his success is the propagation of irregular unions, adultery and prostitution."

And there was no rebutting evidence, either ecclesiastical or otherwise, before the Commission to the effect that this cause did not produce these results or that there was anything in the production of them which was advantageous to either Church or State.

Another witness who agreed with Mr. Freke Palmer in holding that divorce by mutual consent ought to be allowed was Mr. Plowden, the Metropolitan Police Magistrate. Here are two striking passages from his evidence, showing that it was because he was in favour of marriage that he was in favour of divorce:

"In my humble opinion marriage should be encouraged in every way, and divorce should be encouraged, not for its own sake, but for the sake of marriage. Regarded as a human institution, marriage cannot hope to be a working success unless divorce is in the background as a reserve. With divorce as a protection against unforeseen calamities arising out of marriage, marriage becomes a wise investment having regard to the circumstances

generally. Without divorce I look upon marriage as a dangerous, mad gamble.

"I look upon divorce as a policy of insurance. I take it it is a fact there is no marriage, however judiciously and carefully it may be arranged, whatever may be the absolute good faith of the parties to it, which is not an experiment. You cannot prevent it being anything else, and therefore I look upon divorce as a policy of insurance, providing an opportunity of relief and release to married couples who, through no fault of their own, without any moral blame, have come into contact with unforeseen difficulties and calamities which make married life intolerable."

That is an argument, of course, which might lead us far. It might be used to support those "companionate" or "trial" marriages of which there has been so much talk lately in the United States, or to prove that there would be fewer miserable marriages if public and clerical opinion attached less importance to ante-nuptial chastity; but Mr. Plowden was not using it for these purposes. The conclusion which he was satisfied to draw was that "two people should be entitled to petition for the dissolution of their marriage if it could be shown that living together was impossible, and that life had become absolutely unbearable."

And the question is, of course: Who gains anything, and how can the cause of religion be served, by the perpetuation of a union which both husband and wife find unbearable?

The suggestion apparently is—at all events one can think of no other—that they ought to continue to sleep together, though they detest each other, regarding themselves as martyrs, out of respect for a text in the *Book of Genesis* or out of love for

the Lord Jesus Christ. But that strikes one as a very queer kind of martyrdom. Whatever regard one may feel for the noble army of martyrs in a good cause, it must be difficult even for the most devout clergyman to find a halo to fit the head of a martyr in such a cause as that; but one gathers from the evidence of Mrs. Swanwick, who spoke from a large experience among the working classes in Manchester, that there are many clergymen—in Manchester, if not elsewhere—who conceive it to be their duty as devout men to look for one.

"My experience is," Mrs. Swanwick said, "that they almost invariably advise the women to endure everything. I have had women who have had every cause, even for a divorce, and certainly for a separation, and they have gone to get advice. There is a woman whom I know intimately who ran off to the clergyman for advice, and his advice to her was that she should go back and endure the most fearful indignities."

That is the sort of evidence which carries weight. It depends upon no philosophical theory. It is not deduced from disputable premises. It is a statement of fact, made by one who had been in contact with the facts, and is therefore both more helpful and more valuable than the testimony of those whose equipment as counsellors consists mainly of formulæ and a stock of ecclesiastical erudition.

Mrs. Swanwick, like Mr. Freke Palmer and Mr. Plowden, approved of divorce simply and solely because she knew what happened when it was unobtainable and could see no better way out of the quandaries which the hard cases presented; and some of them, she felt, were so very hard that a way out of them really must be found. Submission

to "the most fearful indignities", as recommended by the clergy in her neighbourhood, was not, she considered, a way out, but only a way of making bad worse; a way which it was disgraceful to propose and ignominious to follow.

And she was not afraid of the obvious conclusion. Divorce by mutual consent, or for incompatibility of temper was, it seemed to her, the natural remedy in such a case. To refuse it, or to say that it ought to be refused, on religious grounds was, it clearly followed, to debase the moral currency, to place Christian morality on a lower level than that of either the Jews or the Romans, and to suggest that, in a Christian marriage, sentimental considerations might very well be left out of account.

That was what she saw, looking at the matter mainly from the point of view of the working classes. Another point of view which might, indeed, be theirs but was more specially that of classes living on a higher social and intellectual plane, was put forward by Maurice Hewlett, the novelist, who introduced himself as "a writer whose business it is to express human life and human nature" and who would be "ill-equipped for success" if he did not know something of his subject, though he proposed to base his remarks about it rather upon a general study of human nature than upon the observation of specific facts.

He spoke as a man of sentiment whom the subject interested only in its sentimental aspect. On the one hand he laid no claim to any knowledge of the special grievances of the poor; on the other, he attached no importance to the opinions of divines. Their various interpretations of the law of Christ and the Church seemed to him as irrelevant to the discussion as any other scholar's interpretation of

the laws of Solon or Gracchus. What he felt was that "by omitting evidence (so far as there may be evidence) concerning the nature and force of love, the Commissioners have been in danger of overlooking not only what is, according to me, of the essence of the sacrament, but what is also, in this country, the mainspring of all serious marriages". He presented the Commissioners with a memorandum designed to fill that gap.

"Love," he premised—but he would hardly have claimed to speak with authority except for persons of approximately his own social and cultural level—was "the governing cause of marriage in England". It seemed reasonable, therefore, to define marriage in England as "the social sanction of the mutual desire of a man and woman to unite their souls through their bodies". For a good marriage, worthy of the name, fulfilling all the ideals of marriage, both "bodily desire and spiritual intention" were essential.

They obviously are, as the divines would presumably have agreed, not foreseeing what was to follow. But the inference drawn—an inference too logical to be easily resisted—was that "the contract cannot be regarded as necessarily perpetual since it is contingent upon the presence of the bodily desire and spiritual intention which are essential to the marriage", and these may disappear; and Maurice Hewlett conceived that its perpetuation might be particularly cruel to a woman.

"She is so made physically," he said, "that she is capable of receiving what she may not at all desire. Moral compulsion, exhortation, cajolery or kindness may tempt her to what she regards as wrong-doing. She may be impotent in intention though not in fact. Should she have neither bodily nor spiritual desire towards her husband

she may be persuaded to submit to him. Should her desire turn to loathing, horror and physical repulsion, she may still be bound. The effect of this upon a sensitive, imaginative, or nervous woman (and nothing acts and reacts so immediately upon the nervous system) may be grievous. No marriage law can be good which can inflict rigidly and by routine such anguish upon the refined, sensitive and honest-minded members of the commuuity."

And such situations, Maurice Hewlett thought, so easily might, and so often did, occur. He was far from agreeing with Canon Hensley Henson that any man and any woman could not only sleep together, but love each other, whenever they found themselves placed in circumstances in which it was their Christian duty to do so. He did not, indeed, argue the point with the Canon, but he said :

"The passion of love, being a passion founded on instinct and fostered by imagination, is irrational, unreflecting, spontaneous and not amenable to law. Undoubtedly it changes its object, and reasonably so. If a youth of twenty-six and a girl of twenty-two, with no experience, little knowledge of each other and none of the rest of their fellow-creatures, fall in love, it is not in the nature of things that marriage, as such, should prevent them changing their affections. If either of them do change subsequently to marriage, it must certainly be the case that the sacrament of marriage, as here conceived of, must be profaned, and it is to be suggested that the contract should be voidable."

One can picture the divines, rather shocked, interposing with a question taken from the Church Catechism : "What meanest thou by this word 'sacrament' ?"

Had they done so, Maurice Hewlett would

presumably have replied that he meant, as they did, "an outward visible sign of an inward and spiritual grace", but that he differed from them in holding, as they apparently did not—at all events in the case of this particular sacrament—that when the inward and spiritual grace had disappeared, it was high time for the outward visible sign to stop, and that to continue it after the inward and spiritual grace had disappeared was a proceeding comparable to the action of those who "come to the Lord's table" without first repenting of their sins, an action which the Church had expressly censured.

And that would have been damaging criticism. On the assumption that marriage is a sacrament, the case for refusing to dissolve a marriage from which love has disappeared is really quite analogous to the case which a special pleader might make out for forcing notorious evil livers to partake of the Lord's Supper. So Maurice Hewlett next asked what the religious objection to the voiding of the marriage contract in such circumstances amounted to, and replied that, so far as he could see, it amounted to rather less than nothing.

"It has been said," he proceeded, "that the man or woman who looks upon another with desire, commits adultery in his heart. It would be equally true to say that the husband or wife who loves somebody else, and nevertheless lives maritally with wife or husband, equally commits adultery. In the Sacrament of the Lord's Supper the partakers are warned lest they eat and drink their own damnation. So it is with the Sacrament of Marriage to those who regard it seriously. They regard as a superficial view of the social effect of this proposal the objection that the result would be debauchery and indulgence of appetite.

"It is worse to keep two persons tied to an incongruous, and indeed shocking union of this nature, than to credit them with sincerity to themselves and to each other. Nothing can be more repugnant to humanity than to stimulate a man to do or a woman to suffer an act of such a significant, intimate and nervous a nature for the sake of outward decorum. Outward conformity at the expense of inner revolt is as unwholesome as it is immoral. . . .

"If men and women, in deference to a social convention, strangle at forty a passion which at twenty was considered honourable, they are being hardly used themselves, and are using hardly their unoffending partners. It is better to marry than burn, better also, by far, to divorce than to burn for one and use another. Under our present system the honourable and sincere are tempted to dishonour and insincerity.

"Marriage, therefore, ought to be voidable in all cases where desire and intention in either party have ceased; for, in the case of base natures, the unoffending party may fairly claim to be freed from degrading use, and, in the case of higher natures, will ardently desire it. It is reasonable also to suppose (in higher natures) that the unoffending party, if still in love with the party desiring release, will be actuated by the generous promptings of affection and desire to release the beloved from an intolerable position. If there should be consent, added to good reason, it would seem difficult for the State to refuse relief."

Such was his case; such were the arguments with which he supported it; and it must be admitted that he did not cover all the ground or make allowance for all the possibilities.

The economic side of the question cannot justly

be ignored as long as wives, for the most part, live in economic dependence on their husbands. The interests of the children, where there are any, must not be left unprotected because husbands and wives have fallen out, or got tired of each other. Love cannot safely be assumed to have been the sole motive of every marriage even in the social circles in which Maurice Hewlett moved. There are, in all circles, men and women who marry for money and position. All these facts, as well as the fact that passion is "irrational, unreflecting, spontaneous and not amenable to law", need to be borne in mind in connection with any proposal to amend the divorce laws; and Maurice Hewlett seems to have overlooked them.

Those qualifications made, however, there is a great deal in what he said.

There are many cases—much more numerous than they used to be, now that women are successfully fighting their way to economic independence—in which there are no such complications. We all know, from confidences which we have received—doctors and clergymen probably receive more such confidences than most other people—marriages which though, as far as any observer could judge, they promised well, have failed, without apparent fault on either side, so completely that it would be absurd to suppose that either prayer or goodwill can prevent them from causing misery to both parties. There may be—there sometimes are—not only moral but physical incompatibilities, quite unsuspected at the time of marriage, which make it absolutely impossible for a man and a woman who, if not married, might be very good friends, to live together happily as husband and wife.

Cases of that sort are, no doubt, the cases

which Maurice Hewlett had in mind, though he cast his net too widely and so seemed to include others.

There is little to be said about most of them excep that the marriage, having become unhappy, continues to be unhappy until the end—not the less unhappy because scandal is avoided. What happens in the other cases all those who read the newspapers have abundant opportunities of observing. First, on the one side or the other—and sometimes on both sides—there is suspicion. Then there is temptation. Finally, if the situation is found unbearable, and economic circumstances permit, the way out which cannot be taken quietly is forced. The knot which it would have been so easy to untie is cut; and the question is:

What does either Church or State—or anyone except the lawyers—stand to gain by refusing to allow the knot which ties a reluctant husband to a reluctant wife to be untied quietly, and by insisting that it shall not be cut unless there has been what the Church calls "sin" and the State calls "misconduct"—unless there has been dirty linen and that dirty linen has been washed in public, at their cost, and to their discomfort?

It is very difficult to say; but it is an unquestionable fact that both Church and State do insist, both of them clinging, though not perhaps for the same reason, to the view that two people ought never, on any account, to be divorced unless one of them objects. Our religious leaders, with very rare exceptions, insist that their religion would be in the melting-pot if the law were altered so as to allow divorce by mutual consent. Our judges—not all of them, but a good many of them—insist with equal emphasis that there shall be no divorce unless the

immoral acts which are alleged on the one side and admitted on the other are actually proved to have taken place. Consequently we have lately found ourselves faced by the strange spectacle of Bishops unwittingly promoting adultery in the name of religion and judges openly encouraging it in the name of the law.

Some judges, as every student of the divorce court reports is aware, have latterly been taking the line—a new one—that adultery ought not to be presumed merely because a man has, like the Member of Parliament who wrote to *The Times*, placed himself in a position from which, in the past, the commission of an act of adultery would always have been inferred. They must also, they have said, be satisfied that he availed himself of his opportunity and actually committed adultery with a particular lady whose identity they require him to disclose. And if that is not to hound men on to commit acts of adultery which might otherwise be avoided, words have lost their meaning.

The episcopal view—though it is not necessarily the view of all the Bishops and is certainly not the view of some of them—we have already had before us in the Pastoral Letter of the Bishop of Chichester: the letter in which the Bishop set forth that there ought, in his opinion, to be no dissolution of any marriage, in spite of the permission to dissolve it accorded by the law, "even if one of the parties prove unfaithful to the other, or it turns out, in the course of time, that husband and wife are wholly unsuited to each other".

What does that mean and imply?

It does not mean, of course—we must be careful to avoid exaggeration—that in the diocese of Chichester adultery is a peccadillo to which the

Bishop attaches no particular importance. But it does imply—for it is absolutely meaningless unless it is held to imply—that, in the opinion of the Bishop of Chichester, mutual fidelity, though for many reasons desirable, need not be regarded as of the essence of the marriage contract seeing that any husband who divorces his wife, or any wife who divorces her husband, even for frequent and flagrant acts of infidelity, will be guilty of deadly sin.

It may be, of course, that the Bishop spoke without thinking, and did not realize the implications of his words. That is the only possible excuse for him, though it is a poor one. His teaching conflicts flagrantly, not only with the law of the State to which he owes his appointment, but also with the doctrines of the Reformation which called into being the Church in which he performs episcopal functions; and it can easily be read by anyone who desires so to read it, as an intimation that, in the view of those who claim to speak with authority on behalf of the Church of England, and give guidance both to the clergy and to the laity, marriage, precisely because it is a sacred institution of Divine origin, may be made to run concurrently with concubinage and promiscuous amours.

Few people will deny that that was an unfortunate line for the Bishop to take; and it is hardly less deplorable that the other Bishops, though they probably do not agree with him, did not think it necessary to remonstrate with him, but left that task to a lay critic to whom his speech and their silence seems to prove that the Church of England, still wrapped in the swaddling clothes of mediæval superstition is, where the most important of all human relations is concerned, a power, in so far as it

is a power at all, not for good but for evil, and one which those who desire just and reasonable marriage laws still have to combat with all their strength.

There are, no doubt, admissions which must be made: the admission notably, that human nature being imperfect, improper use can be made of just and reasonable as well as of unjust and unreasonable marriage laws. Dumas discovered and deplored that fact after the restoration of divorce to France. One finds a supplementary proof of it in some parts of the United States, where some cinema stars seem to spend in the divorce courts all the time that they can spare from the discharge of their artistic duties in the studios. But these facts do not warrant the inference, drawn by some of the ecclesiastical people, that unjust and unreasonable marriage laws will make the world a better place.

They will do nothing of the kind. On the contrary, those increased facilities for correcting matrimonial mistakes by means of divorce which they oppose with pious eloquence could hardly fail to produce two very desirable results. They would increase the sum of human happiness by increasing the number of happy marriages, conforming to the Christian ideal; and they would diminish immorality by removing the gravest of the temptations to it. These are ends which the clergy profess to desire quite as ardently as other people. It remains only to persuade than that those who desire the end must also desire the means.

When that is done—and some day, no doubt, it will be done—their belief in the absolute and unqualified indissolubility of marriage will go the way of their belief in the literal accuracy of the

stories of the Garden of Eden, Noah's Ark, and the Tower of Babel, and they will discover, and tell us, that to work for the reform of the divorce laws is to work, not for the indulgence of lust and licence, but for the more frequent realization of the Divine ideal of marriage.

THE END